

**MURFREESBORO CITY COUNCIL**  
**Regular Meeting Agenda**  
**Council Chambers – City Hall -- 7:00 PM**  
**November 7, 2019**

**PRAYER**

Mayor McFarland

**PLEDGE OF ALLEGIANCE**

**Consent Agenda**

1. FY 2020 City Manager Approved Budget Amendments (Finance)
2. Habitat for Humanity Sub-Recipient Agreement (Community Development)
3. Network and Computer Security Service (Information Technology)
4. Purchase of a 27 Yard Automatic Side Loader (Solid Waste)
5. Purchase of 2020 Ford F-350 Crew Cab 4x2 (Transportation)
6. Asphalt Purchases Report (Water Resources)
7. Commercial Painting Inc. Contract Change Order No. 1 (Water Resources)
8. FY 2019 Cost of Service and Rate Study (Water Resources)
9. Pall Membrane PC Software Upgrades (Water Resources)
10. Installation of Six Variable Frequency Drives (Water Resources)

**Old Business**

Ordinance

Land Use Matters

11. Ordinance 19-OZ-36: Amend the Marketplace at Savannah Ridge PUD along Shelbyville Pike (2nd and final reading) (Planning)
12. Ordinance 19-OZ-37: Rezoning approximately 26.2 acres along Cherry Lane (2nd and final reading) (Planning)
13. Ordinance 19-OZ-38: Plan of Services, Annexation, and Zoning for property located along Asbury Lane (2nd and final reading) (Planning)

**New Business**

Ordinance

14. Ordinance 19-O-35 Murfreesboro Water Resources Board Compensation (Water Resources)
  - a. Ordinance 19-O-35: Water Resources Board Compensation

Land Use Matters

15. Planning Commission Recommendation to Schedule Public Hearings (Planning)

## On Motion

16. Affordable Housing Program Community Development – 511 East Sevier St. (Community Development)
17. Reimbursement for Use of Personal Automobile on City Business Handbook Section 1014 (Human Resources)
18. Repeal of Employee Handbook Section 1026 - Use of City-Owned Vehicles (Human Resources)
19. Update of Employee Handbook Section 4001 – Safety and Health Protection on the Job (Human Resources)
20. Veterans Ride Free on Rover (Transportation/Rover)
21. Water/Wastewater Mech/Elect Services Task Order No. 19-11 (Water Resources)

## **Licensing**

### **Board & Commission Reappointment**

#### **Water Resources Board:**

Reappoint Mr. Alphonse Carter, Jr. term expires: June 30, 2023

#### **Disciplinary Review Board:**

Appoint Mr. Eric L. Meriwether (Category of Business Owner) (filling the vacancy left by Doug Patrick) term expires: September 30, 2025

## **Payment of Statements**

## **Other Business**

## **Adjournment**

# COUNCIL COMMUNICATION

Meeting Date: 11/07/2019

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**Item Title:** FY 2020 City Manager Approved Budget Amendments

**Department:** Finance

**Presented by:** Melissa B. Wright

**Requested Council Action:**

Ordinance	<input type="checkbox"/>
Resolution	<input type="checkbox"/>
Motion	<input type="checkbox"/>
Direction	<input type="checkbox"/>
Information	<input checked="" type="checkbox"/>

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## Summary

Notification to Council of City Manager approved budget amendments.

## Background Information

Ordinance 15-O-48 requires notification to Council of City Manager approved budget amendments. The following budget amendments have been approved:

### Civic Plaza

New signage and electrical and lighting upgrades are needed for the Civic Plaza, move \$341 and 21,659 from Unforeseen Contingencies into Other Improvements and Repair & Maintenance – Grounds & Improvement respectively to cover expenses.

## Fiscal Impacts

The transfers within the General Fund will have no effect on fund balance.

## Attachments:

Detailed Inter-Fund Budget Requests



### Inter-Fund Budget Amendment Request

Mr. Tindall,

Submitted for your approval, per Ordinance 15-O-48, is the following budget amendment requesting a transfer within the same fund.

Budget Fiscal Year: 2020

Move funds from:

Org 10130008  
Object 599909  
Acct Name Unforeseen Contingencies  
Amount \$ 341.00

Move funds to:

Org 10315119  
Object 593900  
Acct Name Other Improvements

Explanation: New Civic Plaza signage.

Move funds from:

Org 10130008  
Object 599909  
Acct Name Unforeseen Contingencies  
Amount \$ 21,659.00

Move funds to:

Org 10315118  
Object 526500  
Acct Name Repair & Maintenance Grounds & Imp

Explanation: Electrical and lighting upgrades for Civic Plaza.

Department Head Signature

Date

Amanda DeRosia

10/22/2019

Reviewed by Finance

Date

Approved



Declined



[Signature]  
City Manager

10/24/2019  
Date

Please return to Amanda DeRosia, Finance & Tax Dept., once all signatures have been obtained.

# COUNCIL COMMUNICATION

Meeting Date: 11/07/2019

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**Item Title:** Habitat for Humanity Sub-Recipient Agreement

**Department:** Community Development

**Presented by:** Sam A. Huddleston, Acting Director

**Requested Council Action:**

Ordinance	<input type="checkbox"/>
Resolution	<input type="checkbox"/>
Motion	<input checked="" type="checkbox"/>
Direction	<input type="checkbox"/>
Information	<input type="checkbox"/>

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**Summary**

Sub-Recipient Agreement with Habitat for Humanity

**Staff Recommendation**

Approve the Sub-Recipient Agreement with Habitat for Humanity.

**Background Information**

The CDBG Year Five Action Plan included \$200,000 CDBG funding of off-site sewer improvements proposed by Habitat for Humanity to serve a proposed low- and moderate-income housing development on Twin Oaks Drive known as Legacy Pointe. Habitat for Humanity is ready to start work and a Sub-Recipient Agreement is needed before CDBG funding can be authorized. No City matching funds are required.

**Council Priorities Served**

*Safe and Livable Neighborhoods*

The project provides affordable housing options for low and moderate income families.

*Strong and Sustainable Financial and Economic Health*

Funding of the project with Federal grant funding and matching funds from Habitat for Humanity is a cost-effective manner for the City to assure that affordable housing is available in our community.

*Engaging Our Community*

Public notice and public outreach activities were conducted to notify the community of the CDBG Year Five Action Plan and availability of funding.

**Fiscal Impacts**

Funding for the \$200,000 is provided by CDBG Federal allocation. Administrative costs for Community Development staff will be funded through CDBG fund allocations.

**Attachments:**

Sub-Recipient Agreement

**DRAFT**  
SUB-RECIPIENT AGREEMENT BETWEEN THE CITY OF MURFREESBORO  
AND  
RUTHERFORD COUNTY AREA HABITAT FOR HUMANITY  
FOR  
Public Improvements / Sanitary Sewer Project for  
Legacy Pointe Subdivision

THIS AGREEMENT, entered this \_\_\_\_\_ day of \_\_\_\_\_ 2019 by and between the City of Murfreesboro, Tennessee, (herein called the "Grantee") and Rutherford County Area Habitat for Humanity, Inc., (herein called the "Sub-recipient").

WHEREAS, the Grantee has applied for and received funds from the United States Government under Title I of the Housing and Community Development Act of 1974, as amended (HCD Act), Public Law 93-383; and

WHEREAS, the Grantee wishes to engage the Sub-recipient to assist the Grantee in utilizing such funds;

NOW, THEREFORE, it is agreed between the parties hereto that;

**I. SCOPE OF SERVICE**

**A. Activities**

The Sub-recipient will be responsible for administering a Community Development Block Grant (CDBG) PY 2019-20 public facility/infrastructure project (the "Project") to provide sanitary sewer service to Legacy Pointe Sub-division located on Tax Map 90 Parcels 22.00 and 22.02 fronting on Twin Oaks Drive in Murfreesboro TN in a manner satisfactory to the Grantee and consistent with any standards required as a condition of providing these funds. Sub-recipient will undertake the Project as more fully described in **Exhibit A** – which is attached here to and incorporated herein. Sub-recipient will meet the CDBG Program's National Objectives as defined in 24 CFR 570.208. The Sub-recipient certifies the Project carried out under this Agreement will benefit low- and moderate-income persons. (see **Exhibit B**).

**B. Performance Monitoring**

The Grantee will monitor the performance of the Sub-recipient with regard to goals and performance based on the objectives, criteria and work schedule contained in **Exhibit A** to determine if it is consistent with the initial purpose of the Project, and to assure compliance with this Agreement and CDBG requirements. Grantee may perform desk inspections and / or site inspections at the office/job site(s). Substandard performance as determined by the Grantee will constitute noncompliance with this Agreement. If action to correct such substandard performance is not taken by the Sub-recipient within a reasonable period of time after being notified by the Grantee, Agreement suspension or termination procedures will be initiated.

## **II. TIME OF PERFORMANCE**

The services of the Sub-recipient shall commence as of the date of this Agreement and shall be completed not later than \_\_\_\_\_ in accordance with **Exhibit A** to this Agreement.

## **III. PAYMENT**

It is expressly agreed and understood that the total amount to be paid by the Grantee under this Agreement shall not exceed Two Hundred Thousand and 00/100 Dollars (\$200,000.00). **Grantee will not guarantee reimbursement of funds until 2019-2020 Program Year HUD allocation of funds is received via the HUD Grant Agreement. Grantee will not guarantee reimbursement in the event CDBG funds are not received or are less than the amount allocated for the program.**

- A. Financial assistance will be in the form of a grant to Sub-recipient. The Grant funds will be provided on a reimbursable basis for eligible expenses actually incurred by the Sub-recipient, subject to receipt of an acceptable requisition, along with documentation, including but not limited to support documentation for direct costs, such as invoices or receipts, and payroll records for labor costs for activities/tasks performed in accordance with this Agreement.
- B. Upon acceptance of the Project by the City Water Resources Department, Sub-recipient will submit an invoice for reimbursement of actual expenses incurred, along with documentation supporting expenses, to Grantee for activities performed in accordance with this Agreement. Descriptions of supporting documentation required are set forth herein in **Exhibit C**.
- C. Grantee shall make careful review of the request for reimbursement. So long as the request conforms to the terms and intent of this Agreement, Grantee shall make payment to Sub-recipient in a timely fashion.
- D. If the cost of the work in Exhibit A or any tasks to complete the Project exceeds Two Hundred Thousand Dollars (\$200,000.00), Sub-recipient agrees to use its own financial resources to complete the Project. Any additional funds, whether federal or non-federal, applied to this Project are subject to federal requirements described herein, including but not limited to the Davis-Bacon Act.
- E. If Sub-recipient has not performed its services as required in this Agreement, it shall not be entitled to reimbursement of funds for services not performed as provided herein and Sub-recipient shall be required to reimburse Grantee for any funds it received for services not provided or not properly provided.
- F. Payments may be contingent upon certification of the Sub-recipient's financial management system in accordance with the standards specified in 2 CFR 200.302.

#### IV. NOTICES

Notices required by this Agreement shall be in writing and delivered via mail (postage prepaid), commercial courier, or personal delivery or sent by facsimile or other electronic means. Any notice delivered or sent as aforesaid shall be effective on the date of delivery or sending. All notices and other written communications under this Agreement shall be addressed to the individuals in the capacities indicated below, unless otherwise modified by subsequent written notice.

Communication and details concerning this Agreement shall be directed to the following Agreement representatives:

##### Grantee

Sam Huddleston  
Community Development Director  
PO Box 1139  
211 Bridge Avenue  
Murfreesboro TN 37133-1139

615-890-4660  
615-217-2260 – FAX  
[shuddleston@murfreesborotn.gov](mailto:shuddleston@murfreesborotn.gov)

##### Sub-recipient

#### V. GENERAL CONDITIONS

- A. General Compliance. The Sub-recipient agrees to comply with the requirements of Title 24 of the Code of Federal Regulations, Part 570 (the U.S. Housing and Urban Development (HUD) regulations concerning Community Development Block Grant (CDBG) including subpart K of these regulations, except that (1) the Sub-recipient does not assume the Grantee's environmental responsibilities described in 24 CFR 570.604 and (2) the Sub-recipient does not assume the Grantee's responsibility for initiating the review process under the provisions of 24 CFR Part 52. The Sub-recipient also agrees to comply with all other applicable Federal, state and local laws, regulations, and policies governing the funds provided under this Agreement. The Sub-recipient further agrees to utilize funds available under this Agreement to supplement rather than supplant funds otherwise available.
- B. Independent Contractor. Nothing contained in this Agreement is intended to, or shall be construed in any manner as, creating or establishing the relationship of employer/employee between the parties. The Sub-recipient shall at all times remain an independent contractor with respect to the services to be performed under this Agreement. The Grantee shall be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance and Workers' Compensation Insurance, as the Sub-recipient is an independent contractor.
- C. Hold Harmless. The Sub-recipient shall hold harmless, defend and indemnify the Grantee from any and all claims, actions, suits, charges and judgments whatsoever that



arise out of the Sub-recipient's performance or nonperformance of the services or subject matter called for in this Agreement.

- D. Workers' Compensation. The Sub-recipient shall provide Workers' Compensation Insurance coverage for all of its employees involved in the performance of this Agreement.
- E. Insurance & Bonding. The Sub-recipient shall obtain general liability and property insurance to protect assets, both real and personal property, funded by these CDBG funds from loss due to theft, fraud and/or undue physical damage and name Grantee as an additional insured and as a loss payee under the policy. Further, Sub-recipient shall comply with the bonding and insurance requirements of OMB 2 C.F.R. 200 Subpart D.
- F. Taxes and Licensing. Sub-recipient and each of its subcontractors shall obtain any and all necessary City business licenses and tax clearances and said City business licenses will be kept current and all taxes shall be paid during the term of the Agreement.
- G. Grantee Recognition. The Sub-recipient shall insure recognition of the role of the Grantee in providing services through this Agreement. All activities, facilities and items utilized pursuant to this Agreement shall be prominently labeled as to funding source. In addition, the Sub-recipient will include a reference to the support provided herein in all publications made possible with funds made available under this Agreement.
- H. Amendments. The Grantee and Sub-recipient may amend this Agreement at any time provided that such amendments make specific reference to this Agreement, and are executed in writing, signed by a duly authorized representative of each organization, and approved by the Grantee's governing body. Such amendments shall not invalidate this Agreement, nor relieve or release the Grantee or Sub-recipient from its obligations under this Agreement.

The Grantee may, in its discretion, amend this Agreement to conform with Federal, state or local governmental guidelines, policies and available funding amounts. If such amendments result in a change in the funding, the scope of services, or schedule of the activities to be undertaken as part of this Agreement, such modifications will be incorporated only by written amendment signed by both Grantee and Sub-recipient.

- I. Suspension or Termination. In accordance with 2 CFR 200.339, the Grantee may suspend or terminate this Agreement if the Sub-recipient materially fails to comply with any terms of this Agreement, which include (but are not limited to) the following:
  - 1. Failure to comply with any of the rules, regulations or provisions referred to herein, or such statutes, regulations, executive orders, and HUD guidelines, policies or directives as may become applicable at any time;
  - 2. Failure, for any reason, of the Sub-recipient to fulfill in a timely and proper manner its obligations under this Agreement;
  - 3. Ineffective or improper use of funds provided under this Agreement; or
  - 4. Submission by the Sub-recipient to the Grantee reports that are incorrect or incomplete in any material respect.

In accordance with 2 CFR 200.339, this Agreement may be terminated for convenience by the Sub-recipient, in whole or in part, by setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if in the case of a partial termination, the Grantee determines that the remaining portion of the award will not accomplish the purpose for which the award was made, the Grantee may terminate the Agreement in its entirety.

- J. Remedies for Non-Compliance. If the Sub-recipient and/or each of its contractors and subcontractors fail to comply with Federal statutes, regulations or the terms and conditions of this Grant, Grantee may impose additional conditions, as described in 2 CFR 200.207.

## **VI. ADMINISTRATIVE REQUIREMENTS**

### **A. Financial Management**

#### **1. Accounting Standards**

The Sub-recipient agrees to comply with *2 CFR 200 - Uniform Administrative Requirements, Cost Principles and Audit Requirements* except as provided for in *24 CFR 570.502 - Applicability of uniform administrative requirements* and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

#### **2. Cost Principles**

The Sub-recipient shall administer its program in conformance with 2 CFR 200 Subpart E (200.400-475). These principles shall be applied for all costs incurred whether charged on a direct or indirect basis and Sub-recipient agrees to adhere to the accounting principles and procedures required therein.

#### **3. Internal Controls**

The Sub-recipient must:

- (a) Establish and maintain effective internal control over the Grant that provides reasonable assurance that the Sub-recipient is managing the Grant in compliance with Federal statutes, regulations, and the terms and conditions of the Grant and this Agreement. These internal controls should be in compliance with guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States or the "Internal Control Integrated Framework", issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).
- (b) Comply with Federal statutes, regulations, and the terms and conditions of the Federal awards.

- (c) Take prompt action when instances of noncompliance are identified including noncompliance identified in audit findings.
- (d) Take reasonable measures to safeguard protected personally identifiable information and other information the Federal awarding agency or pass-through entity designates as sensitive or the Sub-recipient considers sensitive consistent with applicable Federal, state, local, and tribal laws regarding privacy and obligations of confidentiality.

B. Documentation and Record Keeping

1. Records to be Maintained

The Sub-recipient shall maintain all records required by the Federal regulations specified in 24 CFR 570.506 that are pertinent to the activities to be funded under this Agreement. Such records shall include but not be limited to:

- (a) Records providing a full description of each activity undertaken;
- (b) Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG program;
- (c) Records required for determining the eligibility of activities;
- (d) Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;
- (e) Records deemed necessary to assure a proper accounting of all CDBG funds;
- (f) Records documenting compliance with the fair housing and equal opportunity components of the CDBG program;
- (g) Financial records as required by 24 CFR 570.502, and 2 CFR 200.333-337; and
- (h) Other records necessary to document compliance with Subpart K of 24 CFR 570.

2. Retention

The Sub-recipient shall retain all financial records, supporting documents, statistical records, and all other records pertinent to the Agreement for a period of four (4) years. The retention period begins on the date of the submission of the Grantee's annual performance and evaluation report to HUD in which the activities assisted under the Agreement are reported on for the final time. Notwithstanding the above, if there is litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started before the expiration of the four-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the four-year period, whichever

occurs later. The four (4) year retention period required in this Agreement for the Sub-recipient exceeds the provisions of 24 CFR.502(a)(7)(ii) so that the retention requirement will be uniform with that of the Grantee in 24 CFR 570.502(a)(7)(i).

3. Client Data

The Sub-recipient shall provide data on the unduplicated number of persons and households benefitting under this Agreement. Such data may be actual, based on collected data or, a certification by Sub-recipient may be accepted as actual being un-obtainable, and an estimate either by observation or by using numbers proportionate to the general population may be submitted and shall include, but not be limited to, client name, address, income level, and race /ethnicity categories. Such information shall be made available to Grantee monitors or their designees for review upon request.

4. Disclosure

The Sub-recipient understands that client information collected under this Agreement is private and the use or disclosure of such information, when not directly connected with the administration of the Grantee's or Sub-recipient's responsibilities with respect to services provided under this Agreement, is prohibited by federal law unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent/guardian.

5. Close-outs

The Sub-recipient's obligation to the Grantee shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to the Grantee), and determining the custodianship of records. Notwithstanding the foregoing, the terms of this Agreement shall remain in effect during any period that the Sub-recipient has control over CDBG funds, including program income.

6. Audits & Inspections

All Sub-recipient records and financial statements as necessary for the Grantee to meet the requirements of 2 CFR 200.300-309 and Subpart F of this part with respect to any matters covered by this Agreement shall be made available to the Grantee, HUD, and the Comptroller General of the United States or any of their authorized representatives, at any time during normal business hours, as often as deemed necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies or questioned costs noted in audit reports must be fully cleared by the Sub-recipient within 30 days after receipt by the Sub-recipient and may be resolved in one of the following ways:

- (a) Introduction of the appropriate documentation;
- (b) Resolution of the questioned cost or deficiency by the Sub-recipient in a manner that is satisfactory to both HUD and Grantee;

- (c) Repayment of questioned costs to the CDBG Program using non-federal funds.

Failure of the Sub-recipient to comply with the above audit requirements will constitute a violation of this contract and may result in the withholding of future payments. The Sub-recipient hereby agrees to have an agency audit, if applicable, conducted in accordance with OMB's "Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards" Guidance.

C. Reporting and Payment Procedures

1. Program Income

The Grantee shall report monthly all Program income (as defined at 24 C.F.R. § 570.500(a)) generated by activities carried out with CDBG funds made available under this Agreement, if applicable. Program income received by the Sub-recipient through activities undertaken with CDBG funds pursuant to this Agreement shall be returned to the Grantee. Program income on hand when the Agreement expires or after the Agreement's expiration shall be paid to the Grantee as required by 24 C.F.R. § 570.503(b)(8).

2. Indirect Costs

Indirect costs are not a billable expense for this activity.

3. Other Funding

If any funding for this Project is to be provided from other sources, the receipt and expenditure of such funds are subject to review. All accounting records necessary to complete a review of other funding sources must be made available to Grantee or Grantee's authorized representative. Any change in a budget applicable to this Project which affects funding from sources other than Grantee must have prior written authorization from the Community Development Director.

4. Progress Reports

The Sub-recipient is responsible for oversight of the operations of the Grant supported Project. Sub-recipient must monitor its Project under the Grant to assure compliance with applicable Federal requirements and that performance expectations are being achieved. Sub-recipient shall submit progress reports to Grantee with each reimbursement request. Reports shall provide details of Project activities, accomplishments and outcomes during the month and to date. The Grantee reserves the right to require the Sub-recipient to submit additional reports in the form, content, and frequency specified by the Grantee.

Sub-recipient and any subcontractors will make available to Grantee upon request, any records, data or files deemed necessary to Grantee to ensure proper operation of the Project.

D. Procurement

1. OMB Standards

Unless specified otherwise within this Agreement, the Sub-recipient shall procure all materials, property, or services in accordance with the requirements of OMB 2 CFR 200 Subpart D 318-326.

2. Compliance

The Sub-recipient shall comply with current Grantee policy concerning the purchase of equipment and shall maintain inventory records of all non-expendable personal property as defined by such policy as may be procured with funds provided herein. All program assets (unexpended program income, property, equipment, etc.) shall revert to the Grantee upon termination of this Agreement.

3. Travel

Travel is not reimbursable with funds provided under this Agreement.

E. Iran Divestment Act.

The requirements of Tenn. Code Ann. § 12-12-101 et.seq., addressing contracting with persons as defined at T.C.A. §12-12-103(5) that engage in investment activities in Iran, shall be a material provision of this Sub-recipient Agreement. The Sub-recipient certifies, under penalty of perjury, that to the best of its knowledge and belief that it is not on the list created pursuant to Tenn. Code Ann. § 12-12-106.

F. Use and Reversion of Assets

The use and disposition of real property and equipment under this Agreement shall be in compliance with the requirements of OMB 2 C.F.R. 200 Subpart D and 24 C.F.R. 570.502, 570.503, and 570.504, as applicable, and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards 2 CFR 200 as applicable, which include but are not limited to the following:

1. The Sub-recipient shall transfer to Grantee any CDBG funds on hand and any accounts receivable attributable to the use of funds under this Contract at the time of termination.

**VII. PERSONNEL & PARTICIPANT CONDITIONS**

A. Civil Rights

1. Compliance

The Sub-recipient agrees to comply with local and state civil rights ordinances and with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age

Discrimination Act of 1975, Executive Order 11063, and Executive Order 11246 as amended by Executive Orders 11375, 11478, 12107 and 12086.

2. Nondiscrimination

The Sub-recipient agrees to comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 CFR 570.607, as revised by Executive Order 13279.

3. Section 504

The Sub-recipient agrees to comply with all Federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which prohibits discrimination against the individuals with disabilities or handicaps in any Federally assisted program. The Grantee shall provide the Sub-recipient with any guidelines necessary for compliance with that portion of the regulations in force during the term of this Agreement.

B. Affirmative Action

Sub-recipient agrees that it shall be committed to carry out an Affirmative Action Program in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1966.

1. Women and Minority-Owned Businesses (W/MBE)

The Sub-recipient will use its best efforts to afford small businesses, minority business enterprises, and women's business enterprises the maximum practicable opportunity to participate in the performance of this Agreement. As used in this Agreement, the terms "small business" means a business that meets the criteria set forth in section 3(a) of the Small Business Act, as amended (15 U.S.C. 632), and "minority and women's business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are African-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. The Sub-recipient may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

a. Sub-recipient and any subcontractor will comply with 2 CFR 200.321 when contracting with small business enterprises, MBEs, WBEs, and labor surplus area firms by:

- (1) Placing qualified small business enterprises, MBEs and WBEs on solicitation lists;
- (2) Assuring that small business enterprises, MBEs and WBEs are solicited whenever they are potential sources;

- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small business enterprises, MBEs and WBEs;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small business enterprises, MBEs and WBEs;
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (6) of this section.

## 2. Access to Records

Sub-recipient shall furnish and cause each of its own Contractors or subcontractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts by Grantee, HUD or its agent, or other authorized Federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.

## 3. Equal Employment Opportunity and Affirmative Action (EEO/AA) Statement

The Sub-recipient will, in all solicitations or advertisements for employees placed by or on behalf of the Sub-recipient, state that it is an Equal Opportunity or Affirmative Action employer.

## 4. Grievance Policy

Sub-recipient will develop and maintain a written grievance policy that incorporates due process standards and allows for prompt resolution of any complaints pertaining to the Project funded by this Grant.

## 5. Subcontract Provisions

The Sub-recipient will include the provisions of Paragraphs A, Civil Rights, and B, Affirmative Action, in every contract, subcontract, sub-Agreement or purchase order, specifically or by reference, so that such provisions will be binding upon each of its own contractors, sub-recipients, or subcontractors.

Each and every contract, subcontract or purchase order, specifically or by reference, awarded by Sub-recipient, including small purchases under this Grant, shall contain all of the provisions of this Agreement in its entirety including but not



limited to the following provisions as applicable, so that such provisions will be binding upon each of its own contractors or subcontractors:

- (a) *Equal Employment Opportunity*— All contracts and subcontracts shall contain a provision requiring compliance with E.O. 11246, “Equal Employment Opportunity,” as amended by E.O. 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and as supplemented by regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”
- (b) *Copeland “Anti-Kickback” Act (18 U.S.C. 874 and 40 U.S.C. 276c)*—All contracts and subcontracts in excess of \$2000 for construction or repair awarded by recipients and sub-recipients shall include a provision for compliance with the Copeland “Anti-Kickback” Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or sub-contractor shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to HUD.
- (c) *Davis-Bacon Act, as amended (40 U.S.C. 276a to a-7)*—When required by Federal program legislation, all construction contracts awarded by the Sub-recipient of more than \$2000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR part 5, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction”). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to HUD.
- (d) *Contract Work Hours and Safety Standards Act (40 U.S.C. 327 through 333)*—Where applicable, all contracts awarded by Sub-recipient in excess of \$100,000 that involve the employment of mechanics or laborers shall include a provision for compliance with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard workweek of 40 hours. Work in excess of the standard workweek is permissible provided that the worker is compensated at a

rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 40 hours in the workweek. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

- (e) *Rights to Inventions Made Under a Contract or Agreement*—Contracts or subcontracts for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by HUD.
- (f) *Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended*—Contracts and subcontracts of amounts in excess of \$100,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to HUD and the Regional Office of the Environmental Protection Agency (EPA).
- (g) *Byrd Anti- Lobbying Amendment (31 U.S.C. 1352)*—Contractors or subcontractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the Grantee.
- (h) *Access*—All contracts and subcontracts shall contain a provision requiring each contractor and subcontractor to furnish all required information and reports and to permit access to its books, fiscal and programmatic records and accounts by Grantee, Comptroller's Office personnel or duly authorized auditors, HUD or its agent, or other authorized Federal officials for purposes of investigation to ascertain compliance with the required rules, regulations and provisions.
- (i) *Section 3 Clause*
  - (1) Compliance: Compliance with the provisions of Section 3 of the HUD Act of 1968, as amended, and as implemented by the regulations set

forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of this Agreement, shall be a condition of the Federal financial assistance provided under this Agreement and binding upon the Sub-recipient and any of the Sub-recipient's contractors and subcontractors. Failure to fulfill these requirements shall subject the Sub-recipient and any of the Sub-recipient's contractors and subcontractors, their successors and assigns, to those sanctions specified by the Agreement through which Federal assistance is provided. The Sub-recipient certifies and agrees that no contractual or other disability exists that would prevent compliance with these requirements.

The Sub-recipient further agrees to comply with these "Section 3" requirements and to include the following language in all subcontracts executed under this Agreement:

"The work to be performed under this Agreement is a Project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701). Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to low- and very low-income residents of the Project area, and that contracts for work in connection with the Project be awarded to business concerns that provide economic opportunities for low- and very low-income persons residing in the metropolitan area in which the Project is located."

The Sub-recipient further agrees to ensure that opportunities for training and employment arising in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction Project are given to low- and very low-income persons residing within the metropolitan area in which the CDBG and/or HOME -funded Project is located; where feasible, priority should be given to low- and very low-income persons within the service area of the Project or the neighborhood in which the Project is located, and to low- and very low-income participants in other HUD programs; and award contracts for work undertaken in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction Project to business concerns that provide economic opportunities for low- and very low-income persons residing within the metropolitan area in which the CDBG and/or HOME -funded Project is located; where feasible, priority should be given to business concerns that provide economic opportunities to low- and very low-income residents within the service area or the

neighborhood in which the Project is located, and to low- and very low-income participants in other HUD programs.

The Sub-recipient certifies and agrees that no contractual or other legal incapacity exists that would prevent compliance with these requirements.

- (2) Notifications: The Sub-recipient agrees to send to each labor organization or representative of workers with which it has a collective bargaining Agreement or other contract or understanding, if any, a notice advising said labor organization or worker's representative of its commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
- (j) *Debarred Subcontractors*—All subcontracts shall contain a provision forbidding the use of CDBG or HOME funds directly or indirectly or to employ, award contracts to, or otherwise engage the services of, or fund any subcontractor during any period of debarment, suspension, or placement in ineligibility status of such subcontractor.
- (k) *Conflict of Interest*—All subcontracts shall contain a provision requiring subcontractor to abide by the provisions of 24 CFR 84.42, 570.611 and 2 CFR 200.318.(c)(1).
- (l) *Remedies*--All subcontracts in excess of \$150,000 must address administrative, contractual or legal remedies in instances contractors violate or breach contract terms and provide for such sanctions and penalties as appropriate.
- (m) *Termination*--All subcontracts in excess of \$10,000 must address termination for cause and for convenience including the manner by which it will be effected and the basis for settlement.
- (n) *Procurement of Recovered Materials*—A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines

## C. Employment Restrictions

### 1. Prohibited Activity

The Sub-recipient is prohibited from using funds provided herein or personnel employed in the administration of the program for: political activities; inherently religious activities; lobbying; political patronage; and nepotism activities.

2. Labor Standards

The Sub-recipient agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended, the provisions of Contract Work Hours and Safety Standards Act (40 U.S.C. 327 *et seq.*) and all other applicable Federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement. The Sub-recipient agrees to comply with the Copeland Anti-Kick Back Act (18 U.S.C. 874 *et seq.*) and its implementing regulations of the U.S. Department of Labor at 29 CFR Part 5. The Sub-recipient shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to Grantee for review upon request.

The Sub-recipient agrees that, except with respect to the rehabilitation or construction of residential property containing less than eight (8) units for CDBG and/or twelve (12) units for HOME, all contractors engaged under contracts in excess of \$2,000.00 for construction, renovation or repair work financed in whole or in part with assistance provided under this contract, shall comply with Federal Davis-Bacon requirements adopted by CDA pertaining to such contracts and with the applicable requirements of the regulations of the Department of Labor, under 29 CFR Parts 1, 3, 5 and 7 governing the payment of wages and ratio of apprentices and trainees to journey workers; provided that, if wage rates higher than those required under the regulations are imposed by state or local law, nothing hereunder is intended to relieve the Sub-recipient of its obligation, if any, to require payment of the higher wage. The Sub-recipient shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of this paragraph.

3. Subcontracts

The Sub-recipient will include this Section 3 clause in every contract and subcontract and will take appropriate action upon a finding that a contractor or subcontractor is in violation of regulations issued by the grantor agency. The Sub-recipient will not subcontract with any entity where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 and will not let any contract or subcontract unless the entity has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

D. Conduct

1. Assignability

The Sub-recipient shall not assign or transfer any interest in this Agreement without the prior written consent of the Grantee; provided, however, that claims for money due or to become due to the Sub-recipient from the Grantee under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the Grantee.

2. Subcontracts

(a) Approvals

The Sub-recipient shall not enter into any contracts or subcontracts with any agency or individual in the performance of this Agreement without the written consent of the Grantee prior to the execution of such contract or subcontract.

(b) Monitoring

The Sub-recipient will monitor all contracted or subcontracted services on a regular basis to assure Agreement compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance.

(c) Content

The Sub-recipient shall cause all of the provisions of this Agreement in its entirety to be included in and made a part of any contract or subcontract executed in the performance of this Agreement.

(d) Selection Process

The Sub-recipient shall undertake to insure that all contracts and subcontracts let in the performance of this Agreement shall be awarded on a fair and open competition basis in accordance with applicable procurement requirements. Executed copies of all contracts and subcontracts shall be forwarded to the Grantee along with documentation concerning the selection process.

3. Hatch Act

The Sub-recipient agrees that neither funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V of the U.S.C.

4. Records

The Sub-recipient will ensure that the fiscal and programmatic records of each contractor and subcontractor will be available for inspection by Grantee and/or Comptroller's Office personnel, or duly authorized auditors. In the case of any

contract or subcontract for work with a private contractor which requires the approval of Grantee, the Sub-recipient shall record, furnish to Grantee in advance, and retain the following records:

- (a) An explanation of how the amount of compensation or reimbursement to be paid was determined;
- (b) Method utilized to solicit bids (attach copies of any printed advertisements);
- (c) Specifications upon which the bids were based;
- (d) Identification of each prospective contractor considered;
- (e) Summary of bids and proposals, if any, received;
- (f) Justification for non-competitive procurement of contract services and reasons for the election of the contractor, or justification for selection of other than the lowest bidder in competitive procurement;
- (g) Name, address and federal identification number of proposed contractor;
- (h) The contractor's affirmative action plan (construction contracts over \$50,000 only); and
- (i) Documentation of efforts made to secure Minority Business Enterprise (MBE) Women's Business Enterprise (WBE) participation. In order to ensure this, the Sub-recipient will include an appropriate clause in all of its subcontracts.

##### 5. Conflict of Interest

The Sub-recipient agrees to abide by the provisions of 2 CFR 200.318(c) and 24 CFR 570.611, which include (but are not limited to) the following:

- (a) The Sub-recipient shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the award and administration of Agreements supported by Federal funds.
- (b) No employee, officer or agent of the Sub-recipient shall participate in the selection, or in the award, or administration of an Agreement supported by Federal funds if a conflict of interest, real or apparent, would be involved.
- (c) No covered persons who exercise or have exercised any functions or responsibilities with respect to CDBG-assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in any Agreement, or have a financial interest in any Agreement, sub-Agreement, contract, or subcontract with respect to the CDBG-assisted activity, or with respect to the proceeds from the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter. For purposes of

this paragraph, a "covered person" includes any person who is an employee, agent, consultant, officer, or elected or appointed official of the Grantee, the Sub-recipient, or any designated public agency.

6. Lobbying

The Sub-recipient hereby certifies that:

- (a) No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal Agreement, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative Agreement, and the extension, continuation, renewal, amendment, or modification of any Federal Agreement, grant, loan, or cooperative Agreement;
- (b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal Agreement, grant, loan, or cooperative Agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and
- (c) It will require that the language of paragraph (d) of this certification be included in the award documents for all sub-awards at all tiers (including sub-Agreements, sub-grants, contracts, and subcontracts under grants, loans, and cooperative Agreements) and that all Sub-recipients shall certify and disclose accordingly:
- (d) Lobbying Certification - This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

7. Religious Activities

The Sub-recipient agrees that funds provided under this Agreement will not be utilized for inherently religious activities prohibited by 24 CFR 570.200(j), such as worship, religious instruction, or proselytization.

**VIII. MISCELLANEOUS**

A. Laws, Orders and Regulations Incorporated

The Sub-recipient agrees to comply and to ensure compliance by each of its employees, contractors, and subcontractors with Grantee's and HUD's



administrative requirements for the CDBG program, and with all federal, state and local laws, regulations, statutes, ordinances, administrative rules, building codes and executive orders applicable to the CDBG assisted Project and this Agreement.

B. Severability

If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby and all other parts of this Agreement shall nevertheless be in full force and effect.

C. Certifications

The person executing this Agreement on behalf of the Sub-recipient hereby personally certifies that the representations and warranties made herein are true and correct as of the date hereof and that such person is a duly appointed officer of the Sub-recipient as indicated below, and that the Sub-recipient shall be lawfully bound hereby.

D. Venue

In the event of a dispute or litigation arising out of said Agreement, it is understood and agreed that this Agreement was executed and is to be performed in Rutherford County, Tennessee and as such, it is agreed by both parties that venue of said litigation, including an action for declaratory judgment, will be in Rutherford County, Tennessee.

E. Attorney Fees

If at any time it is necessary for Grantee to undertake any action to enforce the terms of this Agreement or any documents attached hereto, Sub-recipient agrees to pay all costs of such enforcement by Grantee including reasonable attorney's fees and court costs.

F. Drug-Free Workplace

Sub-recipient agrees to administer a policy designed to ensure that its operation is free from the illegal use, possession, or distribution of drugs or alcohol by its employees.

G. Non-Profit Status

Sub-recipient warrants that it is a non-profit corporation and shall maintain its non-profit status throughout the entire term of this Agreement. This Agreement shall terminate automatically in the event that Sub-recipient shall cease to exist as a non-profit corporation under the laws of the state of Tennessee, and in said event, Sub-recipient shall not be entitled to reimbursement of funds, and it shall be required to reimburse Grantee for any funds it received for services not provided or not properly provided.

H. Section Headings and Subheadings

The section headings and subheadings contained in this Agreement are included for convenience only and shall not limit or otherwise affect the terms of this Agreement.

I. Waiver

The Grantee's failure to act with respect to a breach by the Sub-recipient does not waive its right to act with respect to subsequent or similar breaches. The failure of the Grantee to exercise or enforce any right or provision shall not constitute a waiver of such right or provision.

J. Entire Agreement

This Agreement constitutes the entire Agreement between the Grantee and the Sub-recipient for the use of funds received under this Agreement and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between the Grantee and the Sub-recipient with respect to this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

CITY OF MURFREESBORO

RUTHERFORD COUNTY AREA  
HABITAT FOR HUMANITY, INC.

\_\_\_\_\_  
SHANE McFARLAND, Mayor

\_\_\_\_\_  
Name \_\_\_\_\_

ATTEST:

Attest:

\_\_\_\_\_  
MELISSA WRIGHT City Recorder

APPROVED AS TO FORM:

\_\_\_\_\_  
ADAM TUCKER, City Attorney

# COUNCIL COMMUNICATION

Meeting Date: 11/07/19

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**Item Title:** Network and Computer Security Service

**Department:** Information Technology Department

**Presented by:** Chris Lilly

**Requested Council Action:**

Ordinance ☐

Resolution ☐

Motion ☒

Direction ☐

Information ☐

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**Summary**

Purchase of security services for citywide network infrastructure.

**Staff Recommendation**

Approve of the purchase of the proposed cybersecurity service.

**Background Information**

The Department is requesting an updated cybersecurity services solution that will increase data security throughout the City's computer network and technical devices.

IT Leadership has been looking for an updated cybersecurity solution that proactively learns from internet activity to identify, block and send notifications of potential threats. Several network security products were reviewed, and one service was selected unanimously. The recommended solution is a hybrid service/application that will monitor and prevent malicious computer and network attacks inside and outside of our network. *(For security purposes, the vendor and software name are being protected.)*

**Council Priorities Served**

*Excellent Services with a Focus on Customer Service*

**Fiscal Impacts**

The pricing is based off the TN State Contract with the NASPO ValuePoint Purchasing Cooperative. Funding for the purchase is \$59,361 per year. Funding of \$30,000 will come from the IT Department's budget and the remaining will be funded from the MWRD budget.

**Attachments:**

CDWG Quote



CITY OF MURFREESBORO

Prepared For :  
Customer # : [1612291](#)  
Attention : Matt Byrnes  
Date : 10/4/2019

Griffin Curcio  
Senior Account Manager  
[877-635-6656](tel:877-635-6656)  
[grifcur@cdwg.com](mailto:grifcur@cdwg.com)

Proposal I

PAYMENT TERMS ANNUAL

Qty.		Part #	Year 1			Price	Extended Price	
	110	Confidential		Confidential		\$141.06	\$15,516.60	
	110				\$133.81	\$14,719.10		
	1100				\$23.02	\$25,322.00		
	1				\$3,803.03	\$3,803.03		
Qty.		Part #	Year 2				Extended Price	
	110	Confidential		Confidential		\$141.06	\$15,516.60	
	110				\$133.81	\$14,719.10		
	1100				\$23.02	\$25,322.00		
	1				\$3,803.03	\$3,803.03		
Qty.		Part #	Year 3				Extended Price	
	110	Confidential		Confidential		\$141.06	\$15,516.60	
	110				\$133.81	\$14,719.10		
	1100				\$23.02	\$25,322.00		
	1				\$3,803.03	\$3,803.03		
Qty.		Part #	Year 4				Extended Price	
	110	Confidential		Confidential		\$141.06	\$15,516.60	
	110				\$133.81	\$14,719.10		
	1100				\$23.02	\$25,322.00		
	1				\$3,803.03	\$3,803.03		
Qty.		Part #	Year 5				Extended Price	
	110	Confidential		Confidential		\$141.06	\$15,516.60	
	110				\$133.81	\$14,719.10		
	1100				\$23.02	\$25,322.00		
	1				\$3,803.03	\$3,803.03		
	5 YEAR TOTAL COST					\$296,803.65		

# COUNCIL COMMUNICATION

Meeting Date: 11/07/2019

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**Item Title:** Purchase of 27 Yard Automatic Side loader

**Department:** Solid Waste Department

**Presented by:**

**Requested Council Action:**

Ordinance ☐

Resolution ☐

Motion ☒

Direction ☐

Information ☐

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## Summary

Purchase of 27 Yard Automatic Side loader from Municipal Equipment through SourceWell

## Staff Recommendation

Approve 27 Yard Automatic Side loader from Municipal Equipment through SourceWell

## Background Information

Additional to Solid Waste Fleet due to growth of city.

## Council Priorities Served

*Excellent Services with a Focus on Customer Service:*

*Equipment that assist with the operational efficiencies increases the Solid Waste Department's abilities to provide customer service at the highest level.*

## Fiscal Impacts

This Purchase was scheduled in the 2018 CIP will be made with proceeds from the 2018 bond issuance. Equipment cost of \$ 328,381.69 is \$21,618.31 under budget.

## Operational Issues

This process increases the Solid Waste Department's operational efficiencies.

**Attachments:**

1 City of Murfreesboro Contract with Municipal Equipment

**2.**

**Agreement for Automated Side Loader  
For Solid Waste Department**

This Agreement is entered into and effective as of the \_\_\_\_ day of \_\_\_\_\_ 2019, by and between the **City of Murfreesboro**, a municipal corporation of the State of Tennessee (the "City"), and **Municipal Equipment, Inc.** a corporation of the Commonwealth of Kentucky ("Contractor") and an authorized dealer for Scranton Mfg. Co., Inc. a.k.a. New Way.

This Agreement consists of the following documents:

- This document
- Scranton Mfg. Co., Inc./New Way's Sourcewell Contract No. 112014-NWY (all relevant documents)
- Contractor's Quote #8-14-19-12 dated August 14, 2019
- Any properly executed amendments to this Agreement

In the event of conflicting provisions, all documents shall be construed according to the following priorities:

- First, any properly executed amendment or change order to this Agreement (most recent amendment or change order given first priority)
- Second, this Agreement
- Third, Scranton Mfg. Co., Inc./New Way's Sourcewell Contract No. 112014-NWY (all relevant documents)
- Lastly, the Contractor's Quote #8-14-19-12 dated August 14, 2019

1. **Duties and Responsibilities of Contractor.** Contractor agrees to provide, and City agrees to purchase the equipment and services set forth on Contractor's Quote #8-14-19-12 dated August 14, 2019 from Scranton Mfg. Co., Inc./New Way's Sourcewell Contract No. 112014-NWY in accordance with Contractor's Proposal. Contractor is a Scranton Mfg. Co., Inc./New Way Authorized Reseller as set forth on Exhibit A.

2. **Term.** Contractor's performance may be terminated in whole or in part:
- a. Upon 30-day prior notice, for the convenience of the City.
  - b. For the convenience of Contractor, provided that Contractor notifies the City in writing of its intent to terminate under this paragraph at least 30 days prior to the effective date of the termination.
  - c. For cause, by either party where the other party fails in any material way to perform its obligations under this Agreement. Termination under this subsection is subject to the condition that the terminating party notifies the other party of its intent to terminate, stating with reasonable specificity the grounds therefore, and the other party fails to remedy the problem within 15 days after receiving the notice.
  - d. Should Contractor fail to fulfill in a timely and proper manner its obligations under this Agreement or if it should violate any of the terms of this Agreement, the City has the right to immediately terminate the Agreement. Such termination does not relieve Contractor of any liability to the City for damages sustained by virtue of any breach by Contractor.
  - e. Should the appropriation for Contractor's work be withdrawn or modified, the City has the right to terminate the Agreement immediately upon written notice to Contractor.

3. **Price; Compensation; Method of Payment.**

- a. The price for the goods and other items to be provided under this Agreement is set forth in the Contractor's Quote #8-14-19-12 dated August 14, 2019 which reflects a total purchase price of \$328,381.69. Any compensation due Contractor under the Agreement shall be made upon submittal of an invoice after delivery and acceptance of the goods and/or services which each payment represents. The City agrees to pay Contractor after goods and/or services have been received, accepted, and properly invoiced as indicated in the Agreement and/or purchase order. Invoices must bear the purchase order number. Final payment shall not be made until after performance is complete.
  - b. Deliveries of all items shall be made within 180 calendar days of order to City of Murfreesboro Solid Waste Department located at 4765 Florence Road Murfreesboro, Tennessee 37129. The contact person is Joey Smith, Director of the Solid Waste Department, 615-893-3681, jsmith@murfreesborotn.gov. The Solid Waste Department must be notified of delivery date and time at least 2 calendar days prior to delivery. Deliveries shall be made during the normal working hours of the City's Solid Waste Department between 6:30 am and 3:00pm, Monday, Tuesday, Thursday or Friday. Deliveries of all items shall be made as stated in the Contractor's Quote #8-14-19-12 dated August 14, 2019. Should the Contractor fail to deliver items on or before its stated date, the City reserves the right to cancel the order or Agreement. The Contractor shall be responsible for making any and all claims against carriers for missing or damaged items.
  - c. Delivered items will not be considered "accepted" until an authorized agent for the City has, by inspection or test of such items, determined that they fully comply with specifications. The City may return, for full credit and at no expense to the City, any item(s) received which fail to meet the specifications as stated in the Scranton Mfg. Co., Inc./New Way's Sourcewell Contract No. 112014-NWY.
  - d. All deliveries made pursuant to the Agreement must be made pursuant to the written purchase order of the City. The City assumes no liability for goods and/or services provided without a written purchase order from the City. Delivery and freight charges are to be prepaid and included in the purchase price.
4. **Warranty.** Unless otherwise specified, every item bid shall meet the warranty requirements set forth in the Scranton Mfg. Co., Inc./New Way's Sourcewell Contract No. 112014-NWY.
5. **Taxes.** The City of Murfreesboro is exempt from State sales tax and will issue a tax exemption certificate to the Contractor as requested. City shall not be responsible for any taxes that are imposed on Contractor. Furthermore, Contractor understands that it cannot claim exemption from taxes by virtue of any exemption that is provided to City.
6. **Work Product.** Except as otherwise provided herein, all data, documents and materials produced and provided by Contractor under this Agreement are the property of the City, which retains the exclusive right to publish, disclose, distribute and otherwise use, in whole or in part, any such data, documents or other materials. Any of the City's property, including but not limited to books, records and equipment, that is in Contractor's possession must be maintained in good condition and repair and returned to the City by Contractor at the end of this Agreement.
7. **Indemnification.**
- a. Contractor must indemnify, defend, and hold harmless the City, its officers, agents and employees from any claims, penalties, damages, costs and attorney fees ("Expenses") arising from injuries or damages resulting from, in part or in whole, the negligent or intentional acts or omissions of contractor, its officers, employees and/or agents,



including its subcontractors or independent contractors, in connection with the performance of this Agreement, and, Expenses arising from any failure of Contractor, its officers, employees and/or agents, including its subcontractors or independent contractors, to observe applicable laws, including, but not limited to, labor laws and minimum wage laws.

- b. Pursuant to Tennessee Attorney General Opinion 93-01, the City will not indemnify, defend or hold harmless in any fashion Contractor from any claims arising from any failure, regardless of any language in any attachment or other document that Contractor may provide.
- c. Copyright, Trademark, Service Mark, or Patent Infringement.
  - i. Contractor, at its own expense, is entitled to and has the duty to defend any suit which may be brought against the City to the extent that it is based on a claim that the products or services furnished infringe a copyright, Trademark, Service Mark, or patent. Contractor will indemnify, defend, and hold harmless the City against any award of damages and costs made against the City. The City will provide Contractor immediate notice in writing of the existence of such claim and full right and opportunity to conduct the defense thereof, together with all available information and reasonable cooperation, assistance and authority from the City in order to enable Contractor to do so. The City reserves the right to participate in the defense of any such action. Contractor has the right to enter into negotiations for and the right to effect settlement or compromise of any such action provided (i) any amounts due to effectuate fully the settlement are immediate due and payable and paid by Contractor; (ii) no cost or expense whatsoever accrues to the City at any time; and (iii) such settlement or compromise is binding upon the City upon approval by the Murfreesboro City Council.
  - ii. If the products or services furnished under this Agreement are likely to, or do become, the subject of such a claim of infringement, then without diminishing Contractor's obligation to satisfy the final award, Contractor may at its option and expense:
    - 1. Procure for the City the right to continue using the products or services.
    - 2. Replace or modify the alleged infringing products or services with other equally suitable products or services that are satisfactory to the City, so that they become non-infringing.
    - 3. Remove the products or discontinue the services and cancel any future charges pertaining thereto; provided however, Contractor will not exercise this option until Contractor and the City have determined that each of the other options are impractical.
  - iii. Contractor has no liability to the City if any such infringement or claim thereof is based upon or arises out of the use of the products or services in combination with apparatus or devices not supplied or else approved by Contractor, the use of the products or services in a manner for which the products or services were neither designated nor contemplated, or the claimed infringement in which the City has any direct or indirect interest by license or otherwise, separate from that granted herein.

8. **Notices.** Notice of assignment of any rights to money due to Contractor under this Agreement must be mailed first class mail or hand delivered to the following:

If to the City of Murfreesboro:

City Manager  
City of Murfreesboro  
111 West Vine Street  
Murfreesboro, TN 37130

If to the Contractor:

Jimmy Hoben  
Municipal Equipment, Inc.  
6305 Shepherdsville Road  
Louisville, KY 40228  
(502) 962-9527  
FAX: (502) 962-6499

9. **Compliance with Laws.** Contractor agrees to comply with any applicable federal, state and local laws and regulations.
10. **Maintenance of Records.** Contractor must maintain documentation for all charges against the City. The books, records, and documents of Contractor, insofar as they relate to work performed or money received under the Agreement, must be maintained for a period of three full years from the date of final payment and will be subject to audit, at any reasonable time and upon reasonable notice by the City or its duly appointed representatives. Accounting records must be maintained in accordance with the Generally Accepted Accounting Principles.
11. **Modification.** This Agreement may be modified only by written amendment executed by all parties and their signatories hereto.
12. **Relationship of the Parties.** Nothing herein may in any way be construed or intended to create a partnership or joint venture between the parties or to create the relationship of principal and agent between or among any of the parties. None of the parties hereto may hold itself out in a manner contrary to the terms of this paragraph. No party becomes liable for any representation, act, or omission of any other party contrary to this section.
13. **Waiver.** No waiver of any provision of this Agreement affects the right of any party thereafter to enforce such provision or to exercise any right or remedy available to it in the event of any other default.
14. **Employment.** Contractor may not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal or laying-off of any individual due to race, creed, color, national origin, age, sex, veteran status, or any other status or class protected under federal or state law or which is in violation of applicable laws concerning the employment of individuals with disabilities.
15. **Non-Discrimination.** It is the policy of the City not to discriminate on the basis of age, race, sex, color, national origin, veteran status, disability, or other status or class protected under federal or state law in its hiring and employment practices, or in admission to, access to, or operation of its programs, services, and activities. With regard to all aspects of this Agreement, Contractor certifies and warrants it will comply with this policy. No person may be excluded from participation in, be denied benefits of, be discriminated against in the admission or access to, or be discriminated against in treatment or employment in the City's contracted programs or activities, on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal or Tennessee State Constitutional or

statutory law; nor may they be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of contracts with the City or in the employment practices of the City's Contractors. Accordingly, all proposers entering into contracts with the City may upon request be required to show proof of such nondiscrimination and to post in conspicuous places that are available to all employees and applicants, notices of nondiscrimination.

16. **Gratuities and Kickbacks.** It is a breach of ethical standards for any person to offer, give or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter, pertaining to any program requirement of a contract or subcontract or to any solicitation or proposal therewith. It is a breach of ethical standards for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or a person associated therewith, as an inducement for the award of a subcontract or order. Breach of the provisions of this paragraph is, in addition to a breach of this Agreement, a breach of ethical standards which may result in civil or criminal sanction and/or debarment or suspension from being a contractor or subcontractor under the City contracts.
17. **Assignment.** The provisions of this Agreement inure to the benefit of and are binding upon the respective successors and assignees of the parties hereto. Except for the rights of money due to Contractor under this Agreement, neither this Agreement nor any of the rights and obligations of Contractor hereunder may be assigned or transferred in whole or in part without the prior written consent of the City. Any such assignment or transfer does not release Contractor from its obligations hereunder.
18. **Integration.** This Agreement sets forth the entire agreement between the parties with respect to the subject matter hereof and governs the respective duties and obligations of the parties.
19. **Force Majeure.** No party has any liability to the other hereunder by reason of any delay or failure to perform any obligation or covenant if the delay or failure to perform is occasioned by *force majeure*, meaning any act of God, storm, fire, casualty, unanticipated work stoppage, strike, lockout, labor dispute, civil disturbance, riot, war, national emergency, act of public enemy, or other cause of similar or dissimilar nature beyond its control.
20. **Governing Law and Venue.** The validity, construction and effect of this Agreement and any and all extensions or modifications thereof are governed by the laws of the state of Tennessee regardless of choice of law doctrine or provision in any attachment or other document that Contractor may provide. Any action between the parties arising from this agreement may only be filed in the courts of Rutherford County, Tennessee.
21. **Severability.** Should any provision of this Agreement be declared to be invalid by any court of competent jurisdiction, such provision will be severed and not affect the validity of the remaining provisions of this Agreement.

22. **Attorney Fees.** In the event any party takes legal action to enforce any provision of the Agreement, should the City prevail, Contractor will pay all expenses of such action including attorney fees, expenses, and costs at all stages of the litigation and dispute resolution.

23. **Effective Date.** This Agreement is not binding upon the parties until signed by each of the Contractor and authorized representatives of the City and is thereafter effective as of the date set forth above.

**IN WITNESS WHEREOF**, the parties enter into this agreement as of \_\_\_\_\_, 2019 (the “Effective Date”).

**CITY OF MURFREESBORO, TENNESSEE**

**MUNICIPAL EQUIPMENT, INC.**

By: \_\_\_\_\_  
Shane McFarland, Mayor

By: \_\_\_\_\_

Its: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Adam F. Tucker, City Attorney

# COUNCIL COMMUNICATION

Meeting Date: 11/07/2019

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**Item Title:** Purchase of 2020 Ford F-350 Crew Cab 4x2

**Department:** Transportation

**Presented by:** Jim Kerr, Transportation Director

**Requested Council Action:**

Ordinance	<input type="checkbox"/>
Resolution	<input type="checkbox"/>
Motion	<input checked="" type="checkbox"/>
Direction	<input type="checkbox"/>
Information	<input type="checkbox"/>

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**Summary**

Purchase of a 2020 Ford F-350 Crew Cab 4x2 with accessory equipment for the installation and removal of traffic control devices for the Transportation Department.

**Staff Recommendation**

Approve the purchase of a Transportation Department vehicle through the State of Tennessee Vehicle Contract with Lonnie Cobb Ford per T.C.A. § 12-3-1201 and Murfreesboro City Code § 2-10(E)(2)(a).

**Background Information**

T.C.A. § 12-3-1201 and Murfreesboro City Code § 2-10(E)(2)(a) permits purchases without competitive bids through Tennessee central procurement office contracts. This purchase of a 2020 F-350 Chassis 4x2 SD Crew Cab 179" WD DRW XLT (W3G) truck is through the State of Tennessee's Statewide Contract with Lonnie Cobb Ford LLC SWC No. 64473. This vehicle will replace a 1990 truck with high mileage, excessive repair costs, and limited repair parts.

**Council Priorities Served**

*Excellent Services with a Focus on Customer Service*

Well-functioning equipment assures the Department is consistently able to respond to the community's needs, provides operational efficiencies, and improves employee safety.

**Fiscal Impact**

Funding for this \$70,060 vehicle and associated equipment purchase is available through the FY20 Transportation Fixed Assets Budget.

**Attachments**

1. State of Tennessee, Department of General Services Central Procurement Office, Contract No. 64473
2. Purchase Contract with Lonnie Cobb Ford

### 3. Vehicle Replacement Request



**STATE OF TENNESSEE, DEPARTMENT OF GENERAL SERVICES  
CENTRAL PROCUREMENT OFFICE**

**Statewide Multi-Year Contract Issued to:**

Lonnie Cobb Ford LLC  
1618 Highway 45 N  
Henderson, TN 38340

Vendor ID: 0000146108

**Contract Number: 0000000000000000000064473**

Title: SWC# 209 - Vehicles

Start Date : October 7, 2019 End Date: September 30, 2021  
Options to Renew: 0

Is this contract available to local government agencies in addition to State agencies?: Yes

**Authorized Users.** This Contract establishes a source or sources of supply for all Tennessee State Agencies. "Tennessee State Agency" refers to the various departments, institutions, boards, commissions, and agencies of the executive branch of government of the State of Tennessee with exceptions as addressed in Tenn. Comp. R. & Regs. 0690-03-01-.01. The Contractor shall provide all goods or services and deliverables as required by this Contract to all Tennessee State Agencies. The Contractor shall make this Contract available to the following entities, who are authorized to and who may purchase off of this Statewide Contract ("Authorized Users"):

- a. all Tennessee State governmental entities (this includes the legislative branch; judicial branch; and, commissions and boards of the State outside of the executive branch of government);
- b. Tennessee local governmental agencies;
- c. members of the University of Tennessee or Tennessee Board of Regents systems;
- d. any private nonprofit institution of higher education chartered in Tennessee; and,
- e. any corporation which is exempted from taxation under 26 U.S.C. Section 501(c)(3), as amended, and which contracts with the Department of Mental Health and Substance Abuse to provide services to the public (Tenn. Code Ann. § 33-2-1001).

These Authorized Users may utilize this Contract by purchasing directly from the Contractor according to their own procurement policies and procedures. The State is not responsible or liable for the transactions between the Contractor and Authorized Users.

Note: If "no", attach exemption request addressed to the Central Procurement Officer.

**Contract Contact Information:**

State of Tennessee  
Department of General Services, Central Procurement Office  
Contract Administrator: Michael Neely  
3rd Floor, William R Snodgrass, Tennessee Tower  
312 Rosa L. Parks Avenue  
Nashville, TN 37243-1102  
Phone: 615-741-5971  
Fax: 615-741-0684

**Line Information**

**Line 1**

Item ID: 1000179934  
*Police, Vehicles, Ford, Generic SWC209 Asset (All Regions)*  
Unit of Measure: EA  
Unit Price: \$ 0

**Line 2**

Item ID: 1000179935  
*Sedans, Ford, Generic SWC209 Asset (All Regions)*  
Unit of Measure: EA  
Unit Price: \$ 0

**Line 3**

Item ID: 1000179936  
*Minivan and Full-size Vans, Ford (Passenger, Cargo, Cut-Away), Generic SWC209 Asset (All Regions)*  
Unit of Measure: EA  
Unit Price: \$ 0

**Line 4**

Item ID: 1000179937  
*Sport Utility Vehicles, Ford (SUVs), Generic SWC209 Asset (All Regions)*  
Unit of Measure: EA  
Unit Price: \$ 0

**Line 5**

Item ID: 1000179938  
*Light Trucks, Ford (Class 1,2,3,4,5) Pickup or Chassis Cab, Generic SWC209 Asset (All Regions)*  
Unit of Measure: EA  
Unit Price: \$ 0

**Line 6**

Item ID: 1000179939  
*Medium Trucks, Ford (Class 6,7) Pickup or Chassis Cab, Generic SWC209 Asset (All Regions)*  
Unit of Measure: EA  
Unit Price: \$ 0



**Line 7**

Item ID: 1000179941

*Optional Equipment, Generic SWC209 Asset (All Regions)*

Unit of Measure: EA

Unit Price: \$ 0

APPROVED:

CHIEF PROCUREMENT OFFICER



Digitally signed by Mike Perry  
DN: cn=Mike Perry, o=Chief  
Procurement Officer,  
ou=Department of General  
Services,  
email=mike.perry@tn.gov, c=US  
Date: 2019.10.01 08:53:38 -05'00'

BY:

Mike Neely

PURCHASING AGENT

Digitally signed by Mike Neely  
DN: cn=Mike Neely, o=TN CFO, ou=CFO,  
email=michael.Neely@tn.gov, c=US  
Date: 2019.10.01 08:04:58 -05'00'

DATE

**CONTRACT BETWEEN  
CITY OF MURFREESBORO  
AND  
LONNIE COBB FORD LLC  
FOR PURCHASE OF VEHICLE**

This Contract is entered into and effective as of the 7<sup>th</sup> day of November 2019, by and between the **CITY OF MURFREESBORO**, a municipal corporation of the State of Tennessee ("City") and **LONNIE COBB FORD LLC**, a corporation of the State of Tennessee ("Contractor").

This Contract consists of the following documents:

- *This Contract*
- *State of Tennessee Contract 64473 with Lonnie Cobb Ford LLC*
- *Price Sheet Attachment to State of Tennessee Contract 64473 with Lonnie Cobb Ford LLE*
- *Price Quote Sheet from Lonnie Cobb Ford LLC for a 2020 F-350 Chassis 4x2 SD Crew Cab 179" WB DRW XLT (W3G)*
- *Any properly executed amendments to this Agreement*

In the event of conflicting provisions, all documents shall be construed according to the following priorities:

- *First, any properly executed amendment or change order to this Contract (most recent amendment or change order given first priority)*
- *Second, this Contract*
- *Third, Contractor's State of Tennessee Contract 64473 with Lonnie Cobb Ford LLC*
- *Fourth, Price Sheet Attachment to State of Tennessee Contract 64473 with Lonnie Cobb Ford LLC*
- *Lastly, Price Quote Sheet from Lonnie Cobb Ford LLC for vehicle described below.*

1. **Duties and Responsibilities of Contractor.** Contractor agrees to provide, and City agrees to purchase one (1) 2020 F-350 Chassis 4x2 SD Crew Cab 179" WB DRW XLT (W3G) as set forth in the State of Tennessee Contract 64473 with Lonnie Cobb Ford LLC, and Contractor's Price Quote Sheets. Furthermore, the City may utilize this Contract to procurement additional vehicles from Contractor per the State of Tennessee Contract 64473 through the term of the contract. Such future procurements shall be executed through a Purchase Order after purchases exceeding \$25,000 have been approved by Council.
2. **Term.** The term of this contract shall be from October 7, 2019 to September 30, 2021. Contractor's performance may be terminated in whole or in part:
  - a. Upon 30-day prior notice, for the convenience of the City.
  - b. For the convenience of Contractor, provided that Contractor notifies the City in writing of its intent to terminate under this paragraph at least 30 days prior to the effective date of the termination.
  - c. For cause, by either party where the other party fails in any material way to perform its obligations under this Agreement. Termination under this subsection is subject to the condition that the terminating party notifies the other party of its intent to terminate, stating with reasonable specificity the grounds therefore, and the other party fails to remedy the problem within 15 days after receiving the notice.

- d. Should Contractor fail to fulfill in a timely and proper manner its obligations under this Agreement or if it should violate any of the terms of this Agreement, the City has the right to immediately terminate the Agreement. Such termination does not relieve Contractor of any liability to the City for damages sustained by virtue of any breach by Contractor.
- e. Should the appropriation for Contractor's work be withdrawn or modified, the City has the right to terminate the Agreement immediately upon written notice to Contractor.

**3. Price; Compensation; Method of Payment.**

- a. The price for the goods and other items to be provided under this Contract is set forth in the Price Quote Sheet from Lonnie Cobb Ford LLC for the vehicles set forth therein which reflects a purchase price of \$70,060.00. Any compensation due Contractor under the Agreement shall be made upon submittal of an invoice after delivery and acceptance of the goods and/or services which each payment represents. The City agrees to pay Contractor after goods and/or services have been received, accepted, and properly invoiced as indicated in the Contract and/or purchase order. Invoices must bear the purchase order number. Final payment shall not be made until after performance is complete.
- b. An employee of the City of Murfreesboro will pick-up the vehicle within three (3) working days of notification by Lonnie Cobb Ford LLC that it is ready for pickup. Please notify the Transportation Department at (615) 893-6441 when vehicle is ready for delivery.
- c. Deliveries of all items shall be made as stated in the Contract documents. Should the Contractor fail to deliver items on or before its stated date, the City reserves the right to cancel the order or contract. The Contractor shall be responsible for making any and all claims against carriers for missing or damaged items.
- d. Delivered items will not be considered "accepted" until an authorized agent for the City has, by inspection or test of such items, determined that they fully comply with specifications. The City may return, for full credit and at no expense to the City, any item(s) received which fail to meet the specifications as stated in the Invitation to Bid.
- e. All deliveries made pursuant to the contract must be made pursuant to the written purchase order of the City. The City assumes no liability for goods and/or services provided without a written purchase order from the City. Delivery and freight charges are to be prepaid and included in the bid price.

**4. Warranty.** Unless otherwise specified, every item bid shall meet the warranty requirements set forth in the specifications.

**5. Indemnification.**

- a. Contractor must indemnify, defend, and hold harmless the City, its officers, agents and employees from any claims, penalties, damages, costs and attorney fees ("Expenses") arising from injuries or damages resulting from, in part or in whole, the negligent or intentional acts or omissions of contractor, its officers, employees and/or agents, including its subcontractors or independent contractors, in connection with the performance of this Agreement, and, Expenses arising from any failure of Contractor, its officers, employees and/or agents, including its subcontractors or independent contractors, to observe applicable laws, including, but not limited to, labor laws and minimum wage laws.

- b. Pursuant to Tennessee Attorney General Opinion 93-01, the City will not indemnify, defend or hold harmless in any fashion Contractor from any claims arising from any failure, regardless of any language in any attachment or other document that Contractor may provide.
- c. Copyright, Trademark, Service Mark, or Patent Infringement.
  - i. Contractor, at its own expense, is entitled to and has the duty to defend any suit which may be brought against the City to the extent that it is based on a claim that the products or services furnished infringe a copyright, Trademark, Service Mark, or patent. Contractor will indemnify, defend, and hold harmless the City against any award of damages and costs made against the City. The City will provide Contractor immediate notice in writing of the existence of such claim and full right and opportunity to conduct the defense thereof, together with all available information and reasonable cooperation, assistance and authority from the City in order to enable Contractor to do so. The City reserves the right to participate in the defense of any such action. Contractor has the right to enter into negotiations for and the right to effect settlement or compromise of any such action provided (i) any amounts due to effectuate fully the settlement are immediate due and payable and paid by Contractor; (ii) no cost or expense whatsoever accrues to the City at any time; and (iii) such settlement or compromise is binding upon the City upon approval by the Murfreesboro City Council.
  - ii. If the products or services furnished under this Agreement are likely to, or do become, the subject of such a claim of infringement, then without diminishing Contractor's obligation to satisfy the final award, Contractor may at its option and expense:
    - 1. Procure for the City the right to continue using the products or services.
    - 2. Replace or modify the alleged infringing products or services with other equally suitable products or services that are satisfactory to the City, so that they become non-infringing.
    - 3. Remove the products or discontinue the services and cancel any future charges pertaining thereto; provided however, Contractor will not exercise this option until Contractor and the City have determined that each of the other options are impractical.
  - iii. Contractor has no liability to the City if any such infringement or claim thereof is based upon or arises out of the use of the products or services in combination with apparatus or devices not supplied or else approved by Contractor, the use of the products or services in a manner for which the products or services were neither designated nor contemplated, or the claimed infringement in which the City has any direct or indirect interest by license or otherwise, separate from that granted herein.

6. **Notices.** Notice of assignment of any rights to money due to Contractor under this Contract must be mailed first class mail or hand delivered to the following:

Notices to City shall be sent to:

**Department:** City of Murfreesboro Administration  
**Attention:** City Manager  
**Address:** Post Office Box 1139  
111 West Vine Street  
Murfreesboro, TN 37133-1139

Notices to Contractor shall be sent to:

**Contractor:** Lonnie Cobb Ford LLC  
**Attention:** Steven Blackstock, Fleet Manager  
**Address:** 1618 U.S. Hwy 45 North,  
Henderson, TN, 38340

7. **Taxes.** The City of Murfreesboro is exempt from State sales tax and will issue a tax exemption certificate to the Contractor as requested. City shall not be responsible for any taxes that are imposed on Contractor. Furthermore, Contractor understands that it cannot claim exemption from taxes by virtue of any exemption that is provided to City.
8. **Compliance with Laws.** Contractor agrees to comply with any applicable federal, state and local laws and regulations.
9. **Maintenance of Records.** Contractor shall maintain documentation for all charges against City. The books, records, and documents of Contractor, insofar as they relate to work performed or money received under the contract, shall be maintained for a period of three (3) full years from the date of final payment and will be subject to audit, at any reasonable time and upon reasonable notice by City or its duly appointed representatives. The records shall be maintained in accordance with the Generally Accepted Accounting Principles.
10. **Modification.** This Contract may be modified only by written amendment executed by all parties and their signatories hereto.
11. **Relationship of the Parties.** Nothing herein may in any way be construed or intended to create a partnership or joint venture between the parties or to create the relationship of principal and agent between or among any of the parties. None of the parties hereto may hold itself out in a manner contrary to the terms of this paragraph. No party becomes liable for any representation, act, or omission of any other party contrary to this section.
12. **Waiver.** No waiver of any provision of this contract shall affect the right of any party thereafter to enforce such provision or to exercise any right or remedy available to it in the event of any other default.
13. **Employment.** Contractor shall not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal or laying-off of any individual due to race, creed, color, national origin, age, sex, veteran status, or any other status or class protected under federal or state law or which is in violation of applicable laws concerning the employment of individuals with disabilities.
14. **Non-Discrimination.** It is the policy of the City not to discriminate on the basis of age, race, sex, color, national origin, veteran status, disability, or other status or class protected under federal or state law in its hiring and employment practices, or in admission to, access to, or operation of its programs, services, and activities. With regard to all aspects of this Agreement, Contractor certifies and warrants it will comply with this policy. No person may be excluded from participation in, be denied benefits of, be discriminated against in the admission or access to, or be discriminated against in treatment or

employment in the City's contracted programs or activities, on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal or Tennessee State Constitutional or statutory law; nor may they be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of contracts with the City or in the employment practices of the City's Contractors. Accordingly, all proposers entering into contracts with the City may upon request be required to show proof of such nondiscrimination and to post in conspicuous places that are available to all employees and applicants, notices of nondiscrimination.

15. **Gratuities and Kickbacks.** It is a breach of ethical standards for any person to offer, give or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter, pertaining to any program requirement of a contract or subcontract or to any solicitation or proposal therewith. It is a breach of ethical standards for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or a person associated therewith, as an inducement for the award of a subcontract or order. Breach of the provisions of this paragraph is, in addition to a breach of this Agreement, a breach of ethical standards which may result in civil or criminal sanction and/or debarment or suspension from being a contractor or subcontractor under the City contracts.
16. **Assignment.** The provisions of this Agreement inure to the benefit of and are binding upon the respective successors and assignees of the parties hereto. Except for the rights of money due to Contractor under this Agreement, neither this Agreement nor any of the rights and obligations of Contractor hereunder may be assigned or transferred in whole or in part without the prior written consent of the City. Any such assignment or transfer does not release Contractor from its obligations hereunder
17. **Integration.** This Contract and State contract set forth the entire agreement between the parties with respect to the subject matter hereof and govern the respective duties and obligations of the parties.
18. **Force Majeure.** No party has any liability to the other hereunder by reason of any delay or failure to perform any obligation or covenant if the delay or failure to perform is occasioned by force majeure, meaning any act of God, storm, fire, casualty, unanticipated work stoppage, strike, lockout, labor dispute, civil disturbance, riot, war, national emergency, act of public enemy, or other cause of similar or dissimilar nature beyond its control.
19. **Governing Law and Venue.** The validity, construction and effect of this Agreement and any and all extensions or modifications thereof are governed by the laws of the state of Tennessee regardless of choice of law doctrine or provision in any attachment or other document that Contractor may provide. Any action between the parties arising from this agreement may only be filed in the courts of Rutherford County, Tennessee.
20. **Severability.** Should any provision of this contract be declared to be invalid by any court of competent jurisdiction, such provision shall be severed and shall not affect the validity of the remaining provisions of this contract.
21. **Attorney Fees.** In the event any party takes legal action to enforce any provision of the Agreement, should the City prevail, Contractor will pay all expenses of such action including attorney fees, expenses, and costs at all stages of the litigation and dispute resolution.


22. **Effective Date.** This Contract shall not be binding upon the parties until signed by each of the Contractor and authorized representatives of the City and is thereafter effective as of the date set forth above.

IN WITNESS WHEREOF, the parties enter into this agreement as of \_\_\_\_\_, 2019 (the "Effective Date").

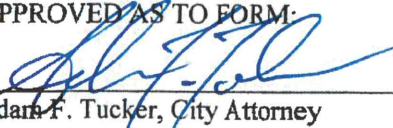
**CITY OF MURFREESBORO**

By: \_\_\_\_\_  
Shane McFarland, Mayor

**LONNIE COBB FORD LLC**

By:   
Steven Blackstock, Fleet Manager

APPROVED AS TO FORM:

  
Adam F. Tucker, City Attorney

## Vehicle Replacement Request

Requesting Department

Transportation

Criteria for replacement of vehicles includes operating costs, safety standards, departmental needs, age and mileage. Before any vehicle is recommended for replacement, a technical/maintenance evaluation will be performed by Fleet Management staff.

Existing vehicle (Make, model, age, mileage, fuel efficiency and Fleet ID No.)

1990 GMC 2500 PU Identification Number 25858 mileage 156710

Driver/Operator of Vehicle

2013 Dodge Ram 2500 PU 4X2 Identification Number 40053 Driven

Hours in Operation per day/week

8

Mileage last 12 months.

760-14448

Justification for vehicle replacement

New Vehicle will replace 1990 boom lift for pulling sign post and lifting heavy objects, will also provide hydraulic and electric power for the utilization of installation tools. This vehicle will replace the need for both vehicles and will be in use 95% of the time. Will provide assistance with heavy signs, will improve safety and potential risk management claims.

Suggested Replacement Vehicle

2019 F-450 Chassis, SD Super Cab 4x2

Additional Equipment (e.g. utility body, tool boxes, emergency lights)

Knapheide boom, winch, power supply and lighting

Requested Budget for Replacement Vehicle

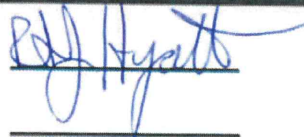
Purchase Cost	80,000
Fuel	500
Annual repair & maintenance	200
Insurance Costs	3,000

83,700

## Fleet Services Recommendation

Approved as Requested

☒



Denied and reasons

☐

Reasons

Approved with Modifications

☐

Modifications



# COUNCIL COMMUNICATION

Meeting Date: 11/07/2019

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**Item Title:** Asphalt Purchases Report

**Department:** Water Resources

**Presented by:** Darren Gore

**Requested Council Action:**

Ordinance	<input type="checkbox"/>
Resolution	<input type="checkbox"/>
Motion	<input type="checkbox"/>
Direction	<input type="checkbox"/>
Information	<input checked="" type="checkbox"/>

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**Summary**

Report of asphalt purchases.

**Staff Recommendation**

The asphalt reporting of purchases, consistent with purchases associated as perishable, fuel-based commodity is provided as information only.

**Background Information**

Purchases of asphalt are made throughout the month and reported with MWRD's O&M's construction projects. The attached report is provided pursuant to City Code, § 2-10 (E)(7). in compliance with this reporting requirement.

Pursuant to the City Code, § 2-10 (E)(7) A purchase of perishable commodities made on the open market does not require public advertisement and competitive bids if a record is made by the person authorizing the purchase which specifies the amount paid, the items purchased and from whom the purchase was made in accordance with T.C.A. §6-56-304(7).

**Council Priorities Served**

*Strong and Sustainable Financial and Economic Health*

Proper procurement ensures best cost savings to the Department and our customers.

*Excellent Services with a Focus on Customer Service*

Maintaining safe drivability of roadways affected by water resources operations focuses on customer service.

**Fiscal Impacts**

The overall costs associated with asphaltic material purchases for these O&M projects are in the range of \$150,000 to \$175,000 per year.

**Attachments:**

Asphalt Purchases Report

## MWRD - OPERATIONS & MAINTENANCE

### ASPHALT QUOTES

	Blue Water		Hawkins		Vulcan		Notes
	<i>Binder</i>	<i>Topping</i>	<i>Binder</i>	<i>Topping</i>	<i>Binder</i>	<i>Topping</i>	
Jul	\$49.00	\$61.00	\$48.50	\$60.50	\$58.00	\$67.50	
Aug	\$49.00	\$61.00	\$48.50	\$60.50	\$58.00	\$67.50	
Sep	\$49.00	\$61.00	\$48.50	\$60.50	\$58.00	\$67.50	
Oct	\$50.25	\$66.25	\$49.98	\$65.00	\$58.00	\$66.24	
Nov							
Dec							
Jan							
Feb							
Mar							
Apr							
May							
Jun							

## MWRD OPERATIONS & MAINTENANCE

## ASPHALT PURCHASES

[illegible]

# COUNCIL COMMUNICATION

Meeting Date: 11/07/2019

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**Item Title:** Commercial Painting Inc. Contract Change Order No. 1

**Department:** Water Resources

**Presented by:** Darren Gore

**Requested Council Action:**

Ordinance	<input type="checkbox"/>
Resolution	<input type="checkbox"/>
Motion	<input checked="" type="checkbox"/>
Direction	<input type="checkbox"/>
Information	<input type="checkbox"/>

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**Summary**

Modify floor coating and preparation for Membrane and Post Treatment Rooms.

**Staff Recommendation**

Approve Change Order No. 1 for Commercial Painting, Inc. in accordance with the Commercial Structures and Facilities Painting contract.

**Background Information**

There are some issues with using the specified flooring coatings and preparation in the Membrane Room and Post Treatment Room that had to be corrected. To correct these issues will increase cost of the coating and preparation of the floors by \$27,123.

**Council Priorities Served**

*Excellent Services with a Focus on Customer Service*

Provides a proper focus on maintenance of the facility thereby increasing the lifespan of the equipment.

Provides a well-maintained facility for customers, students and other visitors.

**Fiscal Impacts**

The cost for the project for FY20 is \$342,790 and \$350,000 is in the FY20 Capital Budget. The \$27,123 increase in the coating and preparation, if approved, would bring the FY20 project to \$369,913. Funding for the additional \$19,913 would come from MWRD's working capital reserves.

**Attachments:**

1. SRWTP - Commercial Painting Inc. Contract Change Order No. 1

**CHANGE ORDER NO. 1  
TO THE  
CONTRACT  
BETWEEN THE CITY OF MURFREESBORO  
AND  
COMMERCIAL PAINTING INC.**

This Change Order No. 1 to the Contract, entered into December 20, 2018 ("Contract"), by and between the City of Murfreesboro ("City"), a municipal corporation of the State of Tennessee and Commercial Painting Inc. ("Contractor"), a Corporation of the State of Tennessee.

**RECITALS**

WHEREAS, on December 20, 2018 the City entered into a contract with Commercial Painting Inc., for Commercial Structure and facilities Painting; and,

WHEREAS, the First Amendment to the contract was effective July 1, 2019 and,

WHEREAS, the City and Contractor wish to issue Change Order No 1 to address issues in the floor that require a different surface preparation and coating system

NOW THEREFORE, the City and Contractor mutually agree to change the current Contract, from July 1, 2019 until June 30, 2020 in the amount of \$342,790.00 to \$369,913.00 which includes areas identified as "Area One", "Area Two", "Area Nine", "Area Ten", and "Area Fifteen" in the original contract.

**CITY OF MURFREESBORO**

By: \_\_\_\_\_  
Shane McFarland, Mayor

**COMMERCIAL PAINTING INC.:**

By:  \_\_\_\_\_  
Ken Darby, Vice President

Approved as to form:

  
\_\_\_\_\_  
Adam F. Tucker, City Attorney

# COUNCIL COMMUNICATION

Meeting Date: 11/07/2019

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**Item Title:** FY19 Cost of Service and Rate Study

**Department:** Water Resources

**Presented by:** Darren Gore

**Requested Council Action:**

Ordinance	<input type="checkbox"/>
Resolution	<input type="checkbox"/>
Motion	<input checked="" type="checkbox"/>
Direction	<input type="checkbox"/>
Information	<input type="checkbox"/>

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**Summary**

Preparation of MWRD's FY19 Cost of Service and Rate Study

**Staff Recommendation**

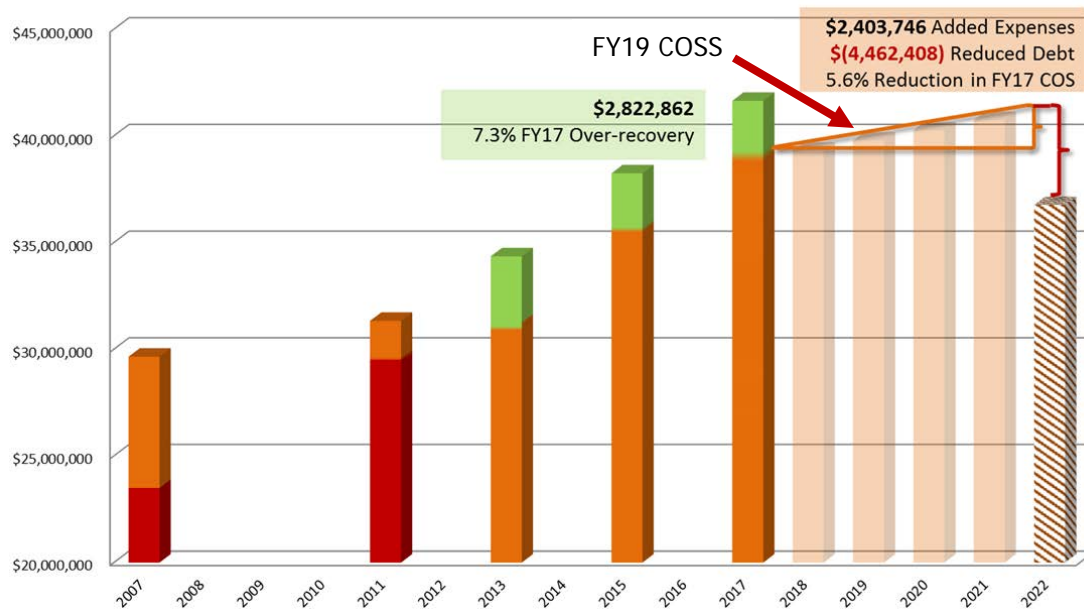
Approve professional services proposal with Jackson Thornton subject to Legal Department approval.

**Background Information**

Staff is recommending the Board recommend approval of a Water Resources Cost of Service (COS) and Rate Study with Jackson Thornton for year ending June 30, 2019 in the amount of \$41,300. The COSS determines the minimum user fees to cover the Department's fixed costs and the commodity rates to cover the production of potable water and treatment of sanitary sewer between the several customer classes the Department serves. Approval of the COS and rate study is consistent with the Department's prior Financial Management Policies adopted in December 2017. Section E. Rates, Fees, and Charges Policies, Item E.6. states: *"The Department shall consider using the services of a qualified independent consultant to conduct a comprehensive cost of service and rate study at approximately two (2) year intervals."* The last COSS was conducted for the Department in FY2017.

The proposal includes determining Cost of Service (COS) and Rate Studies for MWRD's water, sewer and repurified (reclaimed) water system.

A new cost of service study will help position the Department appropriately to develop our five (5) year rate design and determine where we are in comparison to the previous 5-yr pro forma calculations developed in the FY17 study. The previous study gave a Pro Forma through FY22 and the proposed study will develop a Pro Forma through FY24.



## Council Priorities Served

### *Strong and Sustainable Financial and Economic Health*

Preparing a cost of service and rate study affords the City fundamental understanding on necessary costs to operate, maintain and fund long-term capital improvements while seeking to maintain affordability indexes.

## Fiscal Impacts

The Jackson Thornton COSS for the water and sewer fund is a fixed fee of \$41,300. This COSS has been budgeted and recommended to be funded from the outside professional services operating account.

## Attachments:

1. Jackson Thornton Proposal for COSS and Rate Study – dated October 16, 2019



Certified Public Accountants  
& Consultants

October 16, 2019

Mr. Darren Gore, P.E.  
Assistant City Manager – Utility Enterprises  
Murfreesboro Water Resources Department  
Post Office Box 1477  
Murfreesboro, Tennessee 37133

Re: Engagement Arrangements for professional services related to  
Revenue Requirements Analysis and Cost of Service/Rate Study  
for the Water/Wastewater/Repurified Systems

Dear Mr. Gore:

We appreciate the opportunity to submit to you and the Murfreesboro Water Resources Department ("MWRD") our proposal to assist you with the Revenue Requirements Analysis and Cost of Service/Rate study detailed herein. We believe that you will find Jackson Thornton's Utilities Consulting Group to be uniquely qualified to assist MWRD with this project because of the extensive knowledge and experience that we have in the utilities industry.

We have performed similar cost of service and rate design projects for many other distribution systems, and will be glad to provide a list of references upon request. We currently assist more than 40 water/wastewater systems with Cost of Service/Rate Study work.

#### **PROJECT STAFFING**

We anticipate that the staff involved in the COS/Rate Study project will primarily be Jim Marshall and Sarah Chandler. I will be the principal-in-charge and Sarah will serve as the manager on this project. In addition, we have a staff of professionals dedicated to utility accounting and consulting that we can call upon if needed.

James B. Marshall, III, the principal responsible for electric, natural gas, and water and sewer utility Cost of Service/Rate Study work has worked with utilities for more than thirteen years. During that time, he has provided financial forecasting, cost of service, and rate design consulting projects for utilities throughout the southeast. Jim has also worked with manufacturing and commercial companies across the country on tax issues and utility negotiations. He is certified by the Association of Energy Engineers as an Energy Procurement Professional. Jim currently serves on AWWA's Rates and Charges Committee as well as the Utility Finance Management Committee for the Kentucky/Tennessee section of AWWA.

Sarah V. Chandler has experience in the utilities industry in the areas of cost of service, rate design, and regulation. Sarah worked for 8 years at the Alabama Public Service Commission as an Advisory Staff Analyst where she reviewed and evaluated rates and other filings for utilities. She also has rate design and cost of service experience with a large interstate natural gas pipeline. She has completed training classes for financial planning, rates, fees, and charges sponsored by AWWA. Sarah serves on AWWA's Finance, Accounting, and Management Controls Committee.



## PROJECT OBJECTIVE

The overall objective of this project is to provide independent analysis and objective information to allow MWRD to determine if its current water, wastewater, and repurified rates need to be changed and, if so, where the changes in rates are needed. For MWRD, we propose this engagement as a multi-phased project.

Phase I – Revenue Requirements Analysis “RRA” – This phase of the project includes working with the management team to review historical accounting and cost records for plant investment and expenditures. We will also review budgets (financial, capital requirements, cash flow, etc.) and loan covenant requirements in order to determine the projected revenue requirements of each utility service and for the system. After performing this RRA, we will know if the current rates will generate the needed revenue requirements for each service provided and for the system.

Phase II – PART 1 - Prepare Embedded Water/Wastewater/Repurified Cost of Service Study “COSS” – This phase of the project includes working with your management team to perform a detailed allocation of the distribution plant, operating expenses, debt service and capital improvement projects to each rate class. From this phase we can determine if rate equity exists between rate classes. The results of this COSS will provide the support for any changes in your rates, if any are needed.

PART 2 - Prepare Preliminary Rate Designs for Each Rate Class – The second part of this phase includes using the COSS results to determine what changes in current rates are needed to generate the revenues desired from each rate class. After preliminary rates have been determined for each rate class, analysis can be prepared reflecting existing rates versus proposed rates and total revenues generated by each different rate class.

## PROJECT PROCEDURES STANDARDS

The procedures employed by JTUC follow generally accepted cost of service principles. Our model is flexible to compensate for individual accounting practices. As a guideline, our water and sewer model follows the allocation processes detailed in the M-1 Manual (“Principles of Water Rates, Fees and Charges prescribed by the American Water Works Association”). Revenue requirements will be calculated using the Cash Method, unless otherwise desired. JTUC has developed a comprehensive Cost of Service model that allows Management and MWRD to explore all study variations desired for each system.

The assistance to be supplied by the personnel of Murfreesboro Water Resources Department has been discussed and coordinated with Darren Gore, Director. We will provide an information request form prior to the first on-site meeting. The timely and accurate completion of this work is essential to our completion of the services described above.

During the course of our engagement, we may accumulate records containing data that should be reflected in MWRD's books and records. MWRD will determine that all such data, if necessary, will be so reflected. Accordingly, MWRD will not expect us to maintain copies of such records in our possession.

## CONFIRMATION OF MANAGEMENT RESPONSIBILITY

You have informed us that the audit of MWRD may be performed in accordance with Government Auditing Standards (GAS) as issued by the Comptroller General of the United States. GAS requires that the auditor remain independent so that opinions, findings, conclusions, judgments, and recommendations will be

impartial and viewed as impartial by reasonable and informed third parties. Before we agree to provide a nonaudit service to MWRD, we must determine whether providing such a service would create a significant threat to our independence for GAS audit purposes, either by itself or in aggregate with other nonaudit services provided. A critical component of our determination is consideration of management's ability to effectively oversee the nonaudit service to be performed.

1. MWRD has designated Darren Gore, Assistant City Manager, a senior member of management, who possesses suitable skill, knowledge, and experience to oversee the revenue services.
2. MWRD will assume all management responsibilities for subject matter and scope of the revenue services.
3. MWRD will evaluate the adequacy and results of the services performed.
4. MWRD accepts responsibility for the results and ultimate use of the services.

#### **FEES AND COSTS**

Since we are proposing to complete both the water, wastewater, and repurified systems simultaneously, we will complete the three studies for a fee capped at \$41,300.

Our price includes the development of cost curves by rate class and the comparison of current to proposed rates. This price does not include time required to meet with potential customers or opposition parties for rate approval.

Our fees are based on the understanding that MWRD will provide us with the data needed in a timely basis. All reasonable travel and out-of-pocket expenses will be billed at cost. The above fees do not include travel time, which will be billed at one-half our standard billing rates and capped to 8 hours per person, per round trip.

Any changes to the project (change of test year, financial projections, rate classes, billing data, etc.) after initial criteria are set will require a change order. We will provide an estimate as to the cost of any of these changes, and will receive approval by your management before proceeding.

Our fees for these services will be billed periodically as the work progresses. Such bills are payable on presentation and a late charge of 1½ % per month will be imposed for any portion of the billed amount not paid within 30 days of the bill date. We reserve the right to suspend our work and/or to terminate our engagement if any bill is not paid in full within 30 days of the bill date. In the event of suspension of our work or termination of our engagement, such work shall not be resumed and such engagement shall not be reinstated, as the case may be, until the account balance and all late charges are paid in full.

#### **CLAIM RESOLUTION**

It is agreed by MWRD and Jackson Thornton & Co., P.C. or any successors in interest that no claim arising out of services rendered pursuant to this agreement by or on behalf of MWRD shall be asserted more than two years after the date of the last report issued by Jackson Thornton & Co., P.C.

This letter constitutes the complete and exclusive statement of agreement between Jackson Thornton & Co., P.C. and MWRD, superseding all proposals, oral or written, and all other communications, with respect to the terms of the engagement between the parties.

Please sign and return the attached copy of this letter to indicate your acknowledgment of, and agreement with, the arrangements for our services.

JACKSON THORNTON & CO., P.C.

A handwritten signature in black ink, appearing to read "Jim B. Marshall", written over a horizontal line.

James B. Marshall, III  
Principal

A handwritten signature in black ink, appearing to read "Sarah V. Chandler", written over a horizontal line.

Sarah V. Chandler  
Senior Manager

Confirmed on behalf of the addressee:

\_\_\_\_\_  
Signature

# COUNCIL COMMUNICATION

Meeting Date: 11/07/2019

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**Item Title:** Pall Membrane SCADA PC Upgrades

**Department:** Water Resources

**Presented by:** Darren Gore

**Requested Council Action:**

Ordinance	<input type="checkbox"/>
Resolution	<input type="checkbox"/>
Motion	<input checked="" type="checkbox"/>
Direction	<input type="checkbox"/>
Information	<input type="checkbox"/>

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**Summary**

Upgrade SCADA PC and associated software.

**Staff Recommendation**

Approve Pall Corporation's Quote for equipment and services.

**Background Information**

The Stones River Water Treatment Plant commissioned the Pall Corporation membranes on December 18, 2008. There are 10 racks with 56 modules each. This is the 0.1 microfiltration system that is used to remove particles, protozoa, colloidal silica and reduces turbidity. This is a critical system that if it fails, no water is produced.

The Pall Corporation has provided a quote with two Options. Staff recommends Option 2 as it is a long-term solution. This option upgrades the existing software to fully supported software. The SCADA PC is currently operating Microsoft Windows XP 32-bit and the quote is to upgrade to Microsoft Windows 10 64-bit. It also upgrades the Rockwell Software RSVIEW32 to FactoryTalk SCADA. There are several other ancillary software pieces that are to be upgrade as part of Option 2 as well. In addition to the software, Pall Engineers must install and perform some programming.

**Council Priorities Served**

*Safe and Livable Neighborhoods*

Provides safe and clean drinking water properly flowing to each customer.

*Excellent Services with a Focus on Customer Service*

Provides safe and clean drinking water properly flowing to each customer.

**Fiscal Impacts**

The cost for the upgrade is \$36,212. The amount in FY20 capital budget is \$40,000.

**Attachments:**

1. SRWTP – 1 – Pall Corporation – Co-op Contract
2. SRWTP – 2 – SRWTP Murfreesboro 2018 SCADA PC Repl Proposal

## **Agreement for Pall Filtration System**

This Agreement is entered into and effective as of the \_\_\_\_ day of \_\_\_\_\_ 2019, by and between the **City of Murfreesboro**, a municipal corporation of the State of Tennessee (the "City"), and **Pall Corporation** a Corporation of the State of New York ("Contractor").

This Agreement consists of the following documents:

- This document
- Pall Proposal No.: 33102018-72169DSP
- Any properly executed amendments to this Agreement

In the event of conflicting provisions, all documents shall be construed according to the following priorities:

- First, any properly executed amendment or change order to this Agreement (most recent amendment or change order given first priority)
- Second, this Agreement
- Lastly, the Contractor's Proposal – Pall Proposal No.: 33102018-72169DSP

1. **Duties and Responsibilities of Contractor.** Contractor agrees to provide and City agrees to purchase "On-Demand Parts & Service Support for Pall Filtration System - New Industrial SCADA PC With Conversion of SCADA to FactoryTalk SE (Contractor's Quote Option #2) from Pall Corporation. in accordance with the Contractor's Proposal (No.: 33102018-72169DSP).
2. **Term.** Contractor's performance may be terminated in whole or in part:
  - a. Upon 30-day prior notice, for the convenience of the City.
  - b. For the convenience of Contractor, provided that Contractor notifies the City in writing of its intent to terminate under this paragraph at least 30 days prior to the effective date of the termination.
  - c. For cause, by either party where the other party fails in any material way to perform its obligations under this Agreement. Termination under this subsection is subject to the condition that the terminating party notifies the other party of its intent to terminate, stating with reasonable specificity the grounds therefore, and the other party fails to remedy the problem within 15 days after receiving the notice.
  - d. Should Contractor fail to fulfill in a timely and proper manner its obligations under this Agreement or if it should violate any of the terms of this Agreement, the City has the right to immediately terminate the Agreement. Such termination does not relieve Contractor of any liability to the City for damages sustained by virtue of any breach by Contractor.
  - e. Should the appropriation for Contractor's work be withdrawn or modified, the City has the right to terminate the Agreement immediately upon written notice to Contractor.
3. **Price; Compensation; Method of Payment.**
  - a. The price for the goods and other items to be provided under this Agreement is set forth in the Pall Corporation Quote: No.: 33102018-72169DSP which reflects a total purchase of \$36,211.73. Any compensation due Contractor under the Agreement shall be made upon submittal of an invoice after delivery and acceptance of the goods and/or services which each payment represents. The City agrees to pay Contractor after goods and/or services have been received, accepted, and properly invoiced as indicated in the

Agreement and/or purchase order. Invoices must bear the purchase order number. Final payment shall not be made until after performance is complete.

- b. Payment Terms: Net 30 days after receipt of goods
  - c. Deliveries of all items shall be made within 6 weeks of issuance Purchase Order to Attn: Alan Cranford - Water Resources Department 5528 Sam Jared Drive, Murfreesboro, TN 37130 - Contact Person: Alan Cranford (tel. 615-848-3222; email. [acranford@murfreesborotn.gov](mailto:acranford@murfreesborotn.gov)) must be notified of delivery date and time within two (2) calendar days prior to delivery. Deliveries shall be made during the normal working hours of the City, Monday through Friday.
  - d. Deliveries of all items shall be made as stated in Option #2 of the quote. Should the Contractor fail to deliver items on or before its stated date, the City reserves the right to cancel the order or Agreement. The Contractor shall be responsible for making any and all claims against carriers for missing or damaged items.
  - e. Delivered items will not be considered "accepted" until an authorized agent for the City has, by inspection or test of such items, determined that they fully comply with specifications. The City may return, for full credit and at no expense to the City, any item(s) received which fail to meet the specifications as stated in the Contractor's Quote (Option #2).
  - f. All deliveries made pursuant to the Agreement must be made pursuant to the written purchase order of the City. The City assumes no liability for goods and/or services provided without a written purchase order from the City. Delivery and freight charges are to be prepaid and included in the purchase price.
4. **Warranty.** Unless otherwise specified, every item provided pursuant to this Agreement shall meet the warranty requirements set forth in the specifications set forth in Contractor's Quote (Option #2).
5. **Taxes.** The City of Murfreesboro is exempt from State sales tax and will issue a tax exemption certificate to the Contractor as requested. City shall not be responsible for any taxes that are imposed on Contractor. Furthermore, Contractor understands that it cannot claim exemption from taxes by virtue of any exemption that is provided to City.
6. **Work Product.** Except as otherwise provided herein, all data, documents and materials produced and provided by Contractor under this Agreement are the property of the City, which retains the exclusive right to publish, disclose, distribute and otherwise use, in whole or in part, any such data, documents or other materials. Any of the City's property, including but not limited to books, records and equipment, that is in Contractor's possession must be maintained in good condition and repair and returned to the City by Contractor at the end of this Agreement.
7. **Indemnification.**
- a. Contractor must indemnify, defend, and hold harmless the City, its officers, agents and employees from any claims, penalties, damages, costs and attorney fees ("Expenses") arising from injuries or damages resulting from, in part or in whole, the negligent or intentional acts or omissions of contractor, its officers, employees and/or agents, including its subcontractors or independent contractors, in connection with the performance of this Agreement, and, Expenses arising from any failure of Contractor, its officers, employees and/or agents, including its subcontractors or independent contractors, to observe applicable laws, including, but not limited to, labor laws and minimum wage laws.
  - b. Pursuant to Tennessee Attorney General Opinion 93-01, the City will not indemnify, defend or hold harmless in any fashion Contractor from any claims arising from any

failure, regardless of any language in any attachment or other document that Contractor may provide.

c. Copyright, Trademark, Service Mark, or Patent Infringement.

- i. Contractor, at its own expense, is entitled to and has the duty to defend any suit which may be brought against the City to the extent that it is based on a claim that the products or services furnished infringe a copyright, Trademark, Service Mark, or patent. Contractor will indemnify, defend, and hold harmless the City against any award of damages and costs made against the City. The City will provide Contractor immediate notice in writing of the existence of such claim and full right and opportunity to conduct the defense thereof, together with all available information and reasonable cooperation, assistance and authority from the City in order to enable Contractor to do so. The City reserves the right to participate in the defense of any such action. Contractor has the right to enter into negotiations for and the right to effect settlement or compromise of any such action provided (1) any amounts due to effectuate fully the settlement are immediate due and payable and paid by Contractor; (2) no cost or expense whatsoever accrues to the City at any time; and (3) such settlement or compromise is binding upon the City upon approval by the Murfreesboro City Council.
- ii. If the products or services furnished under this Agreement are likely to, or do become, the subject of such a claim of infringement, then without diminishing Contractor's obligation to satisfy the final award, Contractor may at its option and expense:
  1. Procure for the City the right to continue using the products or services.
  2. Replace or modify the alleged infringing products or services with other equally suitable products or services that are satisfactory to the City, so that they become non-infringing.
  3. Remove the products or discontinue the services and cancel any future charges pertaining thereto; provided however, Contractor will not exercise this option until Contractor and the City have determined that each of the other options are impractical.
- iii. Contractor has no liability to the City if any such infringement or claim thereof is based upon or arises out of the use of the products or services in combination with apparatus or devices not supplied or else approved by Contractor, the use of the products or services in a manner for which the products or services were neither designated nor contemplated, or the claimed infringement in which the City has any direct or indirect interest by license or otherwise, separate from that granted herein.

8. **Notices.** Notice of assignment of any rights to money due to Contractor under this Agreement must be mailed first class mail or hand delivered to the following:

If to the City of Murfreesboro:

City Manager  
City of Murfreesboro  
111 West Vine Street  
Murfreesboro, TN 37130

If to the Contractor:

Lou Mattera  
Pall Corporation  
839 State Route 13  
Courtland, New York 13045-5630

9. **Compliance with Laws.** Contractor agrees to comply with any applicable federal, state and local laws and regulations.



10. **Maintenance of Records.** Contractor must maintain documentation for all charges against the City. The books, records, and documents of Contractor, insofar as they relate to work performed or money received under the Agreement, must be maintained for a period of three full years from the date of final payment and will be subject to audit, at any reasonable time and upon reasonable notice by the City or its duly appointed representatives. Accounting records must be maintained in accordance with the Generally Accepted Accounting Principles.
11. **Modification.** This Agreement may be modified only by written amendment executed by all parties and their signatories hereto.
12. **Relationship of the Parties.** Nothing herein may in any way be construed or intended to create a partnership or joint venture between the parties or to create the relationship of principal and agent between or among any of the parties. None of the parties hereto may hold itself out in a manner contrary to the terms of this paragraph. No party becomes liable for any representation, act, or omission of any other party contrary to this section.
13. **Waiver.** No waiver of any provision of this Agreement affects the right of any party thereafter to enforce such provision or to exercise any right or remedy available to it in the event of any other default.
14. **Employment.** Contractor may not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal or laying-off of any individual due to race, creed, color, national origin, age, sex, veteran status, or any other status or class protected under federal or state law or which is in violation of applicable laws concerning the employment of individuals with disabilities.
15. **Non-Discrimination.** It is the policy of the City not to discriminate on the basis of age, race, sex, color, national origin, veteran status, disability, or other status or class protected under federal or state law in its hiring and employment practices, or in admission to, access to, or operation of its programs, services, and activities. With regard to all aspects of this Agreement, Contractor certifies and warrants it will comply with this policy. No person may be excluded from participation in, be denied benefits of, be discriminated against in the admission or access to, or be discriminated against in treatment or employment in the City's contracted programs or activities, on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal or Tennessee State Constitutional or statutory law; nor may they be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of contracts with the City or in the employment practices of the City's Contractors. Accordingly, all proposers entering into contracts with the City may upon request be required to show proof of such nondiscrimination and to post in conspicuous places that are available to all employees and applicants, notices of nondiscrimination.
16. **Gratuities and Kickbacks.** It is a breach of ethical standards for any person to offer, give or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter, pertaining to any program requirement of a contract or

subcontract or to any solicitation or proposal therewith. It is a breach of ethical standards for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or a person associated therewith, as an inducement for the award of a subcontract or order. Breach of the provisions of this paragraph is, in addition to a breach of this Agreement, a breach of ethical standards which may result in civil or criminal sanction and/or debarment or suspension from being a contractor or subcontractor under the City contracts.

17. **Assignment.** The provisions of this Agreement inure to the benefit of and are binding upon the respective successors and assignees of the parties hereto. Except for the rights of money due to Contractor under this Agreement, neither this Agreement nor any of the rights and obligations of Contractor hereunder may be assigned or transferred in whole or in part without the prior written consent of the City. Any such assignment or transfer does not release Contractor from its obligations hereunder.
18. **Integration.** This Agreement sets forth the entire agreement between the parties with respect to the subject matter hereof and governs the respective duties and obligations of the parties.
19. **Force Majeure.** No party has any liability to the other hereunder by reason of any delay or failure to perform any obligation or covenant if the delay or failure to perform is occasioned by *force majeure*, meaning any act of God, storm, fire, casualty, unanticipated work stoppage, strike, lockout, labor dispute, civil disturbance, riot, war, national emergency, act of public enemy, or other cause of similar or dissimilar nature beyond its control.
20. **Governing Law and Venue.** The validity, construction and effect of this Agreement and any and all extensions or modifications thereof are governed by the laws of the state of Tennessee regardless of choice of law doctrine or provision in any attachment or other document that Contractor may provide. Any action between the parties arising from this agreement may only be filed in the courts of Rutherford County, Tennessee.
21. **Severability.** Should any provision of this Agreement be declared to be invalid by any court of competent jurisdiction, such provision will be severed and not affect the validity of the remaining provisions of this Agreement.
22. **Attorney Fees.** In the event any party takes legal action to enforce any provision of the Agreement, should the City prevail, Contractor will pay all expenses of such action including attorney fees, expenses, and costs at all stages of the litigation and dispute resolution.
23. **Effective Date.** This Agreement is not binding upon the parties until signed by each of the Contractor and authorized representatives of the City and is thereafter effective as of the date set forth above.

*[signatures appear on the following page]*

**IN WITNESS WHEREOF**, the parties enter into this agreement as of \_\_\_\_\_, 2019  
(the “Effective Date”).

**CITY OF MURFREESBORO, TENNESSEE**

**PALL CORPORATION.**

By: \_\_\_\_\_  
Shane McFarland, Mayor

By: Lou Mattera, After Sales Manager

APPROVED AS TO FORM:

\_\_\_\_\_  
Adam F. Tucker, City Attorney

\_\_\_\_\_

Pall Proposal No.: 33102018-72169DSP

Date: April 12, 2018

Stones River WTP  
5528 Sam Jared Drive  
Murfreesboro, TN 37133  
Attn: Mike Papula  
Email: [mpapula@murfreessborotn.gov](mailto:mpapula@murfreessborotn.gov)

Re: On-Demand Parts & Service Support for Pall Filtration System at Stones River WTP  
Equipment no: Large Water; WBS#: 01.00048  
SAP: 1381

As a follow up to your discussion with Pall, we are pleased to offer a proposal for technical services. We will arrange onsite support pending receipt of your purchase order, at which time site visit details will be confirmed.

#### Scope of Services

##### **Option 1**

Pall proposes to upgrade the existing SCADA PC by replacing it with a new, 32-bit, industrial PC fully configured to operate as the plant SCADA system, operating on Microsoft Windows 7\*

Pall will perform initial PC set up, and complete the following prior to shipment to site:

- Installation of RSLinx and required reference files
- Installation of RSLogix5000 PLC programming software and associated utilities
- Installation of RSView SCADA software and associated utilities, add-ons and extensions
- Loading of site-specific RSView SCADA screens
- Installation of XL Reporter and NPT Active-X software
- Installation and activation of MSOffice (new license supplied with new PC)
- Installation and configuration of the data collection software
- Installation and configuration of a new 12-month license for Symantec Endpoint anti-virus software (new license issued with PC)
- Simulate & test the operation of the PC before shipment to site

Pall Water will order the new computer and configure it as much as possible prior to shipment to the customer's site. Once the expected shipment date is known, Pall Water will work with the customer to schedule a Field Service Engineer to the customer's site to install the computer in the main control panel, transfer the required software licenses from the old computer to the new, test and make any adjustments needed to the software to ensure proper SCADA operation. The Field Service Engineer will then review with plant operating personnel before concluding work at the site. The Field Service Engineer is expected to spend up to two days on site. Disposal of the old computer is by others.

All software licenses for the software listed above will be moved from the old computer to the new one, unless otherwise noted. As necessary, Pall will work with the customer to obtain the most current copies of SCADA screens and other site-specific programming for installation on the new PC. Customer must provide current software license numbers of all Rockwell Software (RSView, RSLogix5000, RSLinx). Installation of any software not originally provided by Pall, as listed above, is not included and must be completed by others.

As part of this upgrade, Pall will include a 12-month license of Symantec Endpoint anti-virus software to provide computer security. Symantec offers Endpoint on a subscription basis. At the conclusion of the initial 12-month period, it is the customer's responsibility to renew the Endpoint subscription with Symantec to continue the security service. Renewal may be completed following the instructions provided with the Endpoint software.

\*Later operating systems such as Windows 8 are currently not supported by SCADA software provider.

## **Option 2**

### **New Industrial SCADA PC With Conversion of SCADA to FactoryTalk SE**

\*\*\* IMPORTANT: The existing SCADA software (Rockwell Software RSView32) will not operate using a PC operating system later than Microsoft Windows 7 Professional 32-bit. Windows 7 is no longer commercially available, and Microsoft will end support for it in 2020. Accordingly, Pall strongly recommends the upgrading to the FactoryTalk SCADA platform as described below for a long-term upgrade solution, allowing continued functionality and support for your SCADA system. \*\*\*

Item 1: Pall proposes to upgrade the existing SCADA PC by replacing it with a new, 64-bit, industrial (control-panel mount) PC fully configured to operate as the plant SCADA system, operating on Microsoft Windows 10. The SCADA system will be converted from RSView to FactoryTalk View SE as part of this upgrade.

Pall Water will provide:

- Installation of RSLogix500 PLC programming software and associated utilities (license moved from old computer)
- Provide and install a new license of FactoryTalk SE SCADA and Studio software and associated utilities, add-ons and extensions, including NPT Active X software
- Re-creation of existing screens in FactoryTalk SE format, based on the existing RSView screens
- Installation of RSNetworx (ControlNet, DeviceNet, Ethernet/IP), RSLogix Emulate 5000 and RSLogix Architect, reusing existing licenses
- Installation of updated NPT Active-X Software
- Installation of updated XL Reporter software
- Simulate & test the operation of the PC before shipment to site

Pall Water will order the new computer, rework the existing screens from the existing RSView application for FactoryTalk, and configure the computer as much as possible prior to shipment to the customer's site. Once the expected shipment date is known, Pall Water will work with the customer to schedule a Field Service Engineer to the customer's site to install the computer in the main control panel, transfer the required software licenses from the old computer to the new, test and make any adjustments needed to the software to ensure proper SCADA operation. The Field Service Engineer will then review with plant operating personnel before concluding work at the site. The Field Service Engineer is expected to spend up to two days on site. Disposal of the old computer is by others.

All software licenses for the software listed above, with the exception of RSLinx Single Node and FactoryTalk SE, will be moved from the old computer to the new one, unless otherwise noted. New licenses of RSLinx Single Node and FactoryTalk SE will be provided by Pall. Installation of any software not originally provided by Pall, as listed above, is not included and must be completed by others.

Please Note: Price contingent on return current (RSView) software. An additional charge of \$5200 will be incurred if not returned.

On Demand Service

On demand, onsite service is provided only when requested by the customer. The service is scheduled based on Pall's ability to accommodate the customer's requested date. Lead time from notification of need by the Customer, to dispatch is to be negotiated prior to contract order.

Our proposal, based on time and materials, is calculated using Pall's Service Rate. Should additional time beyond the quoted value be required to successfully complete the scope; we will request a revision to your Purchase Order, while onsite, or recommend arrangements be made for a future site visit.

PROPOSAL SUMMARYOption 1

Off-Site Parts & Technical Support: MM# WH017463 - On Demand \$21,143.64

Travel Expense Reimbursement - Expenses: MM# 25662 N/A

Option 2

On-Site Parts & Technical Support: MM# WH017463 - On Demand \$36,211.73

Travel Expense Reimbursement - Expenses: MM# 25662 Included in above

**Total amount for purchase order:** Option 1 \$ 21,143.64  
Option 2 \$36,211.73

**Service Reports:** If service reports are required by your site to comply with your company or state regulations, please indicate on your order that service report documents are required. Service reports detailing the visit and recommendations will then be provided.

**Materials:** This proposal covers parts and services.

**Validity:** This proposal is valid for 30 days.

**Terms of Sale:** Standard Terms and Conditions of Sale Non-Systems - The Americas

**Terms of Service:**

- Regular minimum service charge is for a 10-hour day. Maximum workday is 12 hours including travel time.

**Service Order acceptance and payment terms:** Pall Advanced Separations Systems requires all accounts outstanding beyond 30 days to be paid in full prior to order acceptance. Your account status will be verified at the time of order placement, and you will be notified if you have a balance due. To avoid order processing, goods shipment or service scheduling delays, please insure your account is up to date in advance of placing your order. Charges per the proposal will be billed automatically upon completion of the service, and sign-off of the service report, and become payable within 30 business days of receipt of the invoice.

**Changes:** Pall shall not implement any changes in the scope of services described in Pall's proposal unless the Customer and Pall agree to the details of the change. Any resulting price, schedule or other contractual modifications, will require a verbal change called into Pall's Customer Service Department, with a follow up written confirmation. This includes any changes necessitated by a change in applicable law.

Pall Proposal No.: 33102018-72169DSP

Date: April 12, 2018

A Purchase Order or written authorization to accept the contract of work as described, along with a signed copy of the attached Customer authorization for service is required in advance of PASS providing the service defined in this proposal.

Please direct your purchase order to:

**Pall Water**  
**Pall System Services**  
P.O. Box 5630  
839 State Route 13  
Cortland, New York 13045-5630  
Tel: 866-475-0115 / Fax: 607.758.4526  
Email: [Pall\\_Technology\\_csc@pall.com](mailto:Pall_Technology_csc@pall.com)  
Attn: Customer Service

### **Pall Systems Support**

To obtain support for your Pall systems installation, our Customers can contact Pall via our toll free number at 866-475-0115 or by email to [pall\\_technology\\_csc@pall.com](mailto:pall_technology_csc@pall.com). Through this channel, you gain access to warranty assistance, technical support as well as our service and spares team.

Pall Customers have access to this 24/7 Service Hotline. Pall System Engineers are on full-time rotation to provide around-the-clock availability of live technical support. This service is charged at \$250 for support time for the first 30 minutes, during normal workday hours between 9:00-AM and 4:00-PM EST, excluding weekends and holidays.

If your system is out of warranty or does not have a 24/7 service support contract, there will be a charge when technical support is to be provided for intervals longer than 30 minutes, or after-hours technical support to resolve the issue. Extensive off-site support will require a purchase order or credit card. Billing is based on a minimum 1-hour charge at Pall's off-site hourly service rate. You will be asked to provide your credit card number or service contract purchase order number that will be billed at Pall's Off-Site Service Rates, with a minimum 1-hour charge. If the problem cannot be resolved over the telephone, the Customer can request a Pall System Service Representative to visit the site location. You will be quoted an Emergency Service Rate and billed for last-minute travel expenses.

Please feel free to call me at your convenience with any questions or comments. We look forward to providing you with field services to assist you with system operation, and await your purchase order.

Sincerely,

Dawn Speranza  
Sales Specialist  
Phone: 607-758-1692 / Cell: 607-222-0696  
Fax: 607-758-4526  
E-mail: [Dawn\\_Speranza@pall.com](mailto:Dawn_Speranza@pall.com)

Pall Proposal No.: 33102018-72169DSP

Date: April 12, 2018

**Customer Authorization for Service**

I am an authorized representative of the customer, and I accept the Terms and Conditions of this Service Agreement on behalf of the customer. I authorize Pall Corporation to perform the work defined in this agreement, and accept the costs and charges defined in this agreement.

Company: \_\_\_\_\_

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title/Position

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Purchase Order No. or Reference for Billing: \_\_\_\_\_

Circle Service Visit Frequency: Annual   Semi-Annual   Quarterly   Single   Emergency

Requested Date(s) to Schedule Service Visit(s): \_\_\_\_\_  
(unless deemed emergency service, please allow a 4-week window to accommodate scheduling by Pall.)

**Pall Proposal No.:** \_\_\_\_\_

**Effective Date and Duration:** This Agreement will be effective as of the date signed below, and will remain in effect:

- until on site service work has been completed by Pall,
- or until 30 days after receipt of notice of termination by either party.

Customer Billing Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Customer Comments: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



Standard Terms and Conditions of Sale  
Non-Systems – The Americas1. **Applicability: Entire Agreement:**

- 1.1. These terms and conditions of sale (these "**Terms**") are the only terms which govern the sale of the goods identified on Buyer's purchase order (the "**Goods**") by Seller to Buyer. By placing a purchase order, Buyer makes an offer to purchase the Goods pursuant to these Terms, including (a) a list of the Goods to be purchased; (b) the quantity of each of the Goods ordered; (c) the requested delivery date; (d) the unit Price for each of the Goods to be purchased; (e) the billing address; and (f) the delivery location (the "**Basic Purchase Order Terms**"), and on no other terms.
- 1.2. The accompanying quotation, proposal, confirmation of sale, invoice, order acknowledgment or similar document delivered by Seller to Buyer (the "**Sales Confirmation**"), the Basic Purchase Order Terms and these Terms (collectively, this "**Agreement**") comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Buyer's general terms and conditions of purchase regardless whether or when Buyer has submitted its purchase order or such terms. Fulfillment of Buyer's order does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Terms.
- 1.3. Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the Goods covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms.

2. **Non-delivery:**

- 2.1 The quantity of any installment of Goods as recorded by Seller on dispatch from Seller's Shipment Point (as defined in **Section 4**) is conclusive evidence of the quantity received by Buyer on delivery unless Buyer can provide conclusive evidence proving the contrary.
- 2.2 Seller shall not be liable for any non-delivery of Goods (even if caused by Seller's negligence) unless Buyer gives written notice to Seller of the non-delivery within 10 days of the date when the Goods would in the ordinary course of events have been received.
- 2.3 Any liability of Seller for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or adjusting the invoice respecting such Goods to reflect the actual quantity delivered.

3. **Delivery:**

- 3.1 The Goods will be delivered within a reasonable time after the receipt of Buyer's purchase order, subject to availability of finished Goods. The delivery and/or shipping schedule is the best estimate possible based on conditions existing at the time of Seller's Sales Confirmation or Seller's quotation and receipt of all specifications, as applicable, and in the case of non-standard items, any such date is subject to Seller's receipt of complete information necessary for design and manufacture. Seller shall not be liable for any delays, loss or damage in transit or for any other direct, indirect, or consequential damages due to delays, including without limitation, loss of use.
- 3.2 Seller may, in its sole discretion, without liability or penalty, deliver partial shipments of Goods to Buyer and ship the Goods as they become available, in advance of the quoted delivery date. If the Goods are delivered in installments, then insofar as each shipment is subject to the same Agreement, the Agreement will be treated as a single contract and not severable.
- 3.3 Seller shall make the Goods available to Buyer at Seller's factory or designated shipment point (each, "**Seller's Shipment Point**") using Seller's standard methods for packaging and shipping such Goods. Buyer shall take delivery of the Goods within 5 days of Seller's written notice that the Goods have been delivered to the Seller's Shipment Point.
- 3.4 If for any reason Buyer fails to accept delivery of any of the Goods on the date fixed pursuant to Seller's notice that the Goods have been delivered at the Seller's Shipment Point, or if Seller is unable to deliver the Goods at the Seller's Shipment Point on such date because Buyer has not provided appropriate instructions, documents, licenses or authorizations: (i) title and risk of loss to the Goods shall pass to Buyer; (ii) the Goods shall be deemed to have been delivered; and (iii) Seller, at its option, may store the Goods until Buyer picks them up, whereupon Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

4. **Shipping Terms:** Unless otherwise mutually agreed to in writing by the parties, delivery shall be FCA (Seller's Shipment Point) INCOTERMS 2010. At Buyer's request, Seller will, at Buyer's risk and expense, arrange for the delivery of the Goods to Buyer's site/facility and Buyer will pay, or reimburse Seller, for all freight charges, taxes, duties, entry fees, brokers' fees, special, miscellaneous and all other ancillary charges and special packaging charges incurred.

5. **Title and Risk of Loss:** Title and risk of loss passes to Buyer upon the earlier of (i) delivery of the Goods at the Seller's Shipment Point or (ii) deemed delivery pursuant to clause 3.4 above. As collateral security for the payment of the purchase price of the Goods, Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title and interest of Buyer in, to and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and

replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the New York Uniform Commercial Code.

## 6. Inspection and Rejection of Nonconforming Goods:

- 6.1** Buyer shall inspect the Goods within 10 days of receipt (the "**Inspection Period**"). Buyer will be deemed to have accepted the Goods unless it notifies Seller in writing of any nonconforming Goods during the Inspection Period and furnishes such written evidence or other documentation as required by Seller. Such notification shall identify each and every alleged nonconformity of the Goods and describe that portion of the shipment being rejected. Seller shall then respond with instructions as to the disposition of the Goods.
- 6.2** If Buyer timely notifies Seller of any nonconforming Goods, Seller shall, in its sole discretion, (i) replace such nonconforming Goods with conforming Goods, or (ii) credit or refund the Price for such nonconforming Goods, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. Buyer shall ship, at its expense and risk of loss, the nonconforming Goods to Seller's Shipment Point. If Seller exercises its option to replace nonconforming Goods, Seller shall, after receiving Buyer's shipment of nonconforming Goods, ship to Buyer, at Buyer's expense and risk of loss, the replaced Goods to the Seller's Shipment Point.
- 6.3** Buyer acknowledges and agrees that the remedies set forth in **Section 6.2** are Buyer's exclusive remedies for the delivery of Nonconforming Goods. Except as provided under **Section 6.2**, all sales of Goods to Buyer are made on a one-way basis and Buyer has no right to return Goods purchased under this Agreement to Seller.
- 6.4** If Seller delivers to Buyer a quantity of Goods of up to 5% more or less than the quantity set forth in the Sales Confirmation, Buyer shall not be entitled to object to or reject the Goods or any portion of them by reason of the surplus or shortfall and shall pay for such Goods the price set forth in the Sales Confirmation adjusted pro rata.

- 7. Services:** Seller will provide such services as are expressly described in the Sales Confirmation (collectively, the "**Services**"), during normal business hours, unless otherwise specified in the Sales Confirmation. Services requested or required by Buyer outside of these hours or in addition to the quoted or agreed upon services will be charged at Seller's then current schedule of rates, including overtime charges, if applicable, and will be in addition to the charges outlined in the Sales Confirmation.

- 8. Purchase Price:** The price for the Goods and/or Services thereof shall be Seller's quoted price. Seller may also at any time assess a fuel or energy surcharge (in addition to the price of the Goods) (the "**Purchase Price**"). The Purchase Price is based on the project schedule defined in this Agreement, Sales Confirmation or applicable contract documents. Notwithstanding anything to the contrary set out herein, in the event of any delay to Seller's delivery schedule caused by Buyer or its representatives (other than for Force Majeure or delays caused by Seller), including without limitation, a suspension of work or the project, a postponement of the delivery date or failure to timely issue a notice of commencement or similar document, then the Purchase Price shall increase by 1% for every month or partial month of such delay and this Agreement shall be construed as if the increased Purchase Price were originally inserted herein, and Buyer shall be billed by Seller on the basis of such increased Purchase Price.

- 9. Taxes:** The Purchase Price is exclusive of any applicable federal, state or local sales, use, excise or other similar taxes, including, without limitation, value added tax, goods and services tax or other similar tax imposed by any governmental authority on any amounts payable by Buyer. All such taxes will be for Buyer's account and will be paid by Buyer to Seller upon submission of Seller's invoices. Buyer agrees to make tax accruals and payments to the tax authorities as appropriate. If Buyer is exempt from any applicable sales tax or equivalent, but fails to notify Seller of such exemption or fails to furnish its Sales Tax Exemption Number to Seller in a timely manner and Seller is required to pay such tax, the amount of any such payment made by Seller will be reimbursed by Buyer to Seller upon submission of Seller's invoices.

## 10. Payment:

- 10.1** Buyer shall pay all invoiced amounts due to Seller within 30 days from the date of Seller's invoice. Buyer shall make all payments hereunder by EFT, wire transfer, or check and in US dollars. Payment for foreign billing shall be in accordance with Seller's written instructions.
- 10.2** Buyer shall pay interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, reasonable attorneys' fees. In addition to all other remedies available under these Terms or at law (which Seller does not waive by the exercise of any rights hereunder), Seller shall be entitled to suspend performance of any Purchase Order, or suspend the delivery of any Goods, if Buyer fails to pay any amounts when due hereunder and such failure continues for 5 days following written notice thereof. Additionally Seller may require payment in cash, security or other adequate assurance satisfactory to Seller when, in Seller's opinion, the financial condition of Buyer or other grounds for insecurity warrant such action.
- 10.3** All sales are subject to the approval of Seller's credit department.
- 10.4** Buyer may not withhold or setoff any amounts that may be claimed by Buyer against any amounts that are due and payable to Seller by reason of any set-off of any claim or dispute with Seller, whether relating to Seller's breach, bankruptcy or otherwise.

## 11. Limited Warranty:

**11.1 Limited Warranty for Goods.** Seller warrants to Buyer that for a period of twelve months from the date of delivery of the Goods, including deemed delivery pursuant to clause 3.4 above (the "**Warranty Period**"), that the Goods manufactured by Seller, when properly installed and maintained, and operated at ratings, specifications and design conditions specified by Seller, will materially conform to Seller's specifications for such Goods set forth in Seller's proposal, or, in the absence of such a proposal, such specifications for such Goods appearing in Seller's product catalogues and literature or in the Sales Confirmation, at the time of the order and will be free from material defects in material and workmanship (this "**Limited Warranty**"). Buyer shall notify Seller promptly in writing of any claims within the Warranty Period and provide Seller with an opportunity to inspect and test the Goods or service claimed to fail to meet this Limited Warranty. Buyer shall provide Seller with a copy of the original invoice for the product or service, and prepay all freight charges to return any Goods to Seller's factory, or other facility designated by Seller. All claims must be accompanied by full particulars, including system operating conditions, if applicable. If the defects are of such type and nature as to be covered by this Limited Warranty, Seller shall, at its option and in its sole discretion, either: (a) accept return of the defective Goods and furnish replacement Goods; (b) furnish replacement parts for the defective Goods; (c) repair the defective Goods; or (d) accept return of the defective Goods and return payments made, or issue credits for, such defective Goods. If Seller determines that any warranty claim is not, in fact, covered by this Limited Warranty, Buyer shall pay Seller its then customary charges for any additionally required service or products.

**11.2 Limited Warranty for Services.** Seller further warrants that all Services performed hereunder, if any, will be performed in a workmanlike manner in accordance with applicable law and industry standards by qualified personnel (this "**Limited Warranty for Services**"); this Limited Warranty for Services shall survive for 30 days following Seller's completion of the Services (the "**Service Warranty Period**"). In the event of a warranty claim under this Limited Warranty for Services, Buyer shall inform Seller promptly in writing of the details of the claim within the Service Warranty Period. Seller's liability under any service warranty is limited (in Seller's sole discretion) to repeating the service that during the Service Warranty Period does not meet this Limited Warranty for Services or issuing credit for the nonconforming portions of the service. If Seller determines that any warranty claim is not, in fact, covered by the foregoing Limited Warranty for Services, Buyer shall pay Seller its then customary charges for all services performed by Seller.

**11.3 No Warranty as to Third Party Products.** Products manufactured by a third party ("**Third Party Product**") may constitute, contain, be contained in, incorporated into, attached to or packaged together with, the Goods. Third Party Products are not covered by the warranty in Section 11.1. For the avoidance of doubt, **SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD PARTY PRODUCT, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.** With respect to any Third Party Product, the warranty, if any, is provided solely through the manufacturer of such Third Party Product, the terms of which vary from manufacturer to manufacturer and Seller assumes no responsibility on their behalf. For Third Party Products, specific warranty terms may be obtained from the manufacturer's warranty statement.

**11.4 Other Limits.** **EXCEPT FOR THE WARRANTIES SET FORTH IN SECTIONS 11.1 and 11.2, SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS AND SERVICES, INCLUDING WITHOUT LIMITATION ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.** Seller does not warrant against, and in no event shall Seller be liable for, damages or defects arising out of improper or abnormal use, misuse, abuse, improper installation (other than by Seller), application, operation, maintenance or repair, alteration, accident, or for negligence in use, storage, transportation or handling or other negligence of Buyer. In no event shall Seller be liable for any Goods repaired or altered by someone other than Seller other than pursuant to written authorization by Seller.

**11.5 Exclusive Obligation.** **THIS WARRANTY IS EXCLUSIVE. THE LIMITED WARRANTY AND THE LIMITED WARRANTY FOR SERVICES ARE THE SOLE AND EXCLUSIVE OBLIGATIONS OF SELLER WITH RESPECT TO THE DEFECTIVE GOODS AND SERVICES. SELLER SHALL NOT HAVE ANY OTHER OBLIGATION WITH RESPECT TO THE GOODS, SERVICES, OR ANY PART THEREOF, WHETHER BASED ON CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE. THE REMEDIES SET FORTH IN SECTIONS 11.1 AND 11.2 SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN SECTION 11.1 AND 11.2.**

**11.6 Buyer Breach.** In no event shall Buyer be entitled to claim under the above Limited Warranties if Buyer is in breach of its obligations, including but not limited to payment, hereunder.

## 12. Limitation of Liability:

**12.1 IN NO EVENT SHALL SELLER BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, INCLUDING WITHOUT LIMITATION, REMANUFACTURING COSTS AND REWORK COSTS, DE-INSTALLATION OR RE-INSTALLATION COST, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED IN ADVANCE BY BUYER OR COULD HAVE BEEN REASONABLY FORESEEN BY BUYER, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (TORT, CONTRACT, OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND WHATEVER THE FORUM, WHETHER ARISING OUT OF OR IN CONNECTION WITH THE MANUFACTURE, PACKAGING, DELIVERY, STORAGE, USE, MISUSE OR NON-USE OF ANY OF ITS GOODS OR SERVICES OR ANY OTHER CAUSE WHATSOEVER.**

**12.2 IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE GOODS SOLD HEREUNDER**

**12.3** The limitation of liability set forth in **Section 12.2** above shall not apply to (i) liability resulting from Seller's gross negligence or willful misconduct and (ii) death or bodily injury resulting from Seller's acts or omissions.

- 13. Cancellation:** Buyer may not cancel this Agreement after Sales Confirmation unless all the details are approved in writing by the parties, including Buyer's agreement to pay a stated amount of termination charges.
- 14. Termination:** In addition to any remedies that may be provided under these Terms, Seller may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under this Agreement and such failure continues for 10 days after Buyer's receipt of written notice of nonpayment; (ii) has not otherwise performed or complied with any of these Terms, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.
- 15. Changes:** Seller shall not be obligated to implement any changes or variations in the scope of work described in Seller's Documentation unless Buyer and Seller agree in writing to the details of the change and any resulting price, schedule or other contractual modifications. This includes any changes or variations necessitated by a change in applicable law occurring after the effective date of this Agreement including these Terms.
- 16. Intellectual Property Infringement:** Buyer has no authorization to make any representation, statement or warranty on behalf of Seller relating to any Goods sold hereunder. Buyer shall indemnify and defend, at its own expense, Seller against claims or liability for U.S. or applicable foreign patent, copyright, trademark or other intellectual property infringement and for product liability arising from the preparation or manufacture of the Goods according to Buyer's specifications or instructions, or from Buyer's unauthorized or improper use of the Goods or part thereof, or from any changes or alterations to the Goods or part thereof made by persons other than Seller, or from the use of the Goods in combination with products not furnished by Seller or from the manufacture or sale or use of Buyer products which incorporate or integrate the Goods.
- 17. Ownership of Materials:** All ideas, concepts, whether patentable or not, devices, inventions, copyrights, improvements or discoveries, designs (including drawings, plans and specifications), estimates, prices, notes, electronic data and other documents or information that are: a) created, prepared, reduced to practice or disclosed by Seller; and/or b) based upon, derived from, or utilize the Confidential Information of Seller, and all related intellectual property rights, shall at all times remain Seller's property. No right, title or interest in any patents, trademarks, trade names or trade secrets, or in any pattern, drawing or design for any of the Goods or in any other Seller intellectual property right, shall pass or transfer to the Buyer and Seller shall at all times retain ownership rights therein. Notwithstanding the foregoing, Seller grants Buyer a non-exclusive, non-transferable license to use any such material to the extent necessary and solely for Buyer's use of the Goods purchased by Buyer from Seller hereunder. Buyer shall not disclose any such material to third parties without Seller's prior written consent. As a condition to Seller's delivery to Buyer of the Goods, Buyer shall not, directly or indirectly, and shall cause its employees, agents and representatives not to: (i) alter or modify the Goods, (ii) disassemble, decompile or otherwise reverse engineer or analyze the Goods, (iii) remove any product identification or proprietary rights notices, (iv) modify or create derivative works, (v) otherwise take any action contrary to Seller's rights in the technology and intellectual property relating to the Goods, (vi) assist or ask others to do any of the foregoing.
- 18. Export:** As a condition to Seller's delivery to Buyer of the Goods, Buyer agrees, with respect to the exportation or resale of the Goods by Buyer, to comply with all requirements of the International Traffic in Arms Regulations ("ITAR") and the Export Administration Regulations ("EAR"), regulations issued thereunder and any subsequent amendments thereto, and all other national, including, but not limited to, European, government laws and regulations on export controls, including laws and regulations pertaining to export licenses, restrictions on export to embargoed countries and restrictions on sales to certain persons and/or entities. Buyer further agrees that the shipment and/or delivery of the Goods by Seller is contingent upon Seller obtaining all required export authorizations, licenses, and permits (collectively, "Authorizations") and Buyer agrees that Seller shall not be liable to Buyer for any failure or delay in the shipment or delivery of the Goods if such Authorizations are delayed, conditioned, denied or not issued by the regulatory or governmental agencies having jurisdiction over such Authorizations.
- 19. Confidentiality:** If Seller discloses or grants Buyer access to any research, development, technical, economic, or other business information or "know-how" of a confidential nature, whether reduced to writing or not, Buyer will not use or disclose any such information to any other person or company at any time, without Seller's prior written consent. In the event that Buyer and Seller have entered into a separate confidentiality agreement (the "Confidentiality Agreement"), the terms and conditions of the Confidentiality Agreement shall take precedence over the terms of this paragraph.
- 20. No Waiver:** No waiver by Seller of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Seller. Seller's failure to exercise, or to delay in exercising, any right, remedy, power or privilege arising from this Agreement, or to insist on Buyer's strict performance of these Terms shall not operate as or be construed as a waiver by Seller.
- 21. Force Majeure:** Whenever performance by Seller of any of its obligations hereunder, is substantially prevented by reason of any act of God, strike, lock out, or other industrial or transportation disturbance, fire, lack of materials, law, regulation or ordinance, war or war conditions, or by reason of any other matter beyond its reasonable control, then such performance shall be excused, and deemed suspended during the continuation of such event and for a reasonable time thereafter, delayed, or adjusted accordingly.

- 22. No Third-Party Beneficiaries:** This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.
- 23. Relationship of the Parties:** The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.
- 24. Validity:** If any provision of this Agreement, the Sales Confirmation or these Terms is held by any competent authority to be invalid or unenforceable in whole or in any part, such provision shall be ineffective, but only to the extent of such invalidity or unenforceability, without invalidating the remainder of such provision nor the other provisions, which shall not be affected.
- 25. Governing Law:** This Agreement, and all the rights and duties of the parties arising from or relating in any way to the subject matter of this Agreement or the transaction(s) contemplated by it, shall be governed by the laws of the State of New York, without giving effect to any choice or conflict of law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of New York.
- The parties expressly exclude the application of the United Nations Conventions on Contracts for the International Sale of Goods, and further exclude the applications of the International Sale of Goods Contracts Convention Act, S.C. 1990-1991, C.13, and the International Sale of Goods Act, R.S.O. 1990, C.I. 10, as amended.
- 26. Submission to Jurisdiction:** Buyer and Seller hereby unconditionally and irrevocably submit to (and waive any objection on the grounds of inconvenient forum or otherwise) the jurisdiction of the Supreme Court of the State of New York, County of Nassau or the United States District Court for the Southern District of New York, which courts shall have exclusive jurisdiction to adjudicate and determine any suit, action or proceeding regarding or relating to this Agreement and the purchase and supply of the Goods. A judgment, order or decision of those courts in respect of any such claim or dispute shall be conclusive and may be recognized and enforced by any courts of any state, country or other jurisdiction.
- 27. No Jury Trial:** BUYER AND SELLER HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT.
- 28. Survival:** All payment, confidentiality and indemnity obligations, warranties, limitations of liability, product return, and ownership of materials provisions together with those sections the survival of which is necessary for the interpretation or enforcement of these Terms, shall continue in full force and effect for the duration stated in such provisions or the applicable statute of limitations.
- 29. Amendment and Modification:** This Agreement may only be amended or modified in a writing which specifically states that it amends this Agreement and is signed by an authorized representative of each party.

# COUNCIL COMMUNICATION

Meeting Date: 11/07/2019

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**Item Title:** Installation of Six WRRF Variable Frequency Drives

**Department:** Water Resources

**Presented by:** Darren Gore

**Requested Council Action:**

Ordinance	<input type="checkbox"/>
Resolution	<input type="checkbox"/>
Motion	<input checked="" type="checkbox"/>
Direction	<input type="checkbox"/>
Information	<input type="checkbox"/>

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## Summary

Approval of a services contract task order to install six Variable Frequency Drives (VFD).

## Staff Recommendation

Approve Task Order 19-08: installation of six VFD's by John Bouchard & Sons Company in the amount of \$58,153.

## Background Information

The Oxidation Ditches at the WRRF are a key unit of the treatment process. The system relies on VFDs controlling the nine 200 HP Aerators which mechanically introduce oxygen into the mixed liquid. The six original VFD's were commissioned in 2009.

## Council Priorities Served

*Safe and Livable Neighborhoods*

The adequate treatment capacity protects citizens' health and the environment.

## Fiscal Impacts

This purchase was budgeted in MWRD's rate funded capital account in the amount of \$480,000. Note that the budgeted amount covers the purchase (\$366,706 – previously approved) and installation (\$58,153) which together total \$424,859.

## Attachments:

1. Task Order 19-08



**TASK ORDER NO. 19-08**

**October 16, 2019**

**BETWEEN**

**JOHN BOUCHARD & SONS COMPANY AND CITY OF MURFREESBORO  
acting by and through the Murfreesboro Water Resources Department**

**UNDER**

**Water/Wastewater System Mechanical/Electrical Services Contract**

**FOR**

**WRRF Installation of Six Variable Frequency Drives**



**Murfreesboro Service Contract Rate Sheet - 2018**

**Murfreesboro WWTP Budget Estimate to Replace (6) Drives 09/13/2019**

Description	Qty (hrs)	Rate	Extended
Project Mgr (RT)	16	\$75.00	\$1,200.00
Project Mgr (OT)		\$110.00	\$0.00
Superintendent (RT)	8	\$67.00	\$536.00
Superintendent (OT)		\$100.50	\$0.00
Pipefitter/Welder (RT)		\$52.00	\$0.00
Pipefitter/Welder (OT)		\$78.00	\$0.00
Sprinkler Fitter (RT)		\$44.00	\$0.00
Sprinkler Fitter (OT)		\$66.00	\$0.00
Electrician (RT)	493	\$52.00	\$25,636.00
Electrician (OT)		\$78.00	\$0.00
Apprentice/Helper (RT)	493	\$37.00	\$18,241.00
Apprentice/Helper (OT)		\$55.50	\$0.00
Expediter/Delivery (RT)		\$29.00	\$0.00
Expediter/Delivery (OT)		\$43.50	\$0.00
Machine Shop Millwright (RT)		\$60.00	\$0.00
Machine Shop Millwright (OT)		\$90.00	\$0.00
HVAC/Plb Service Tech (RT)		\$66.00	\$0.00
HVAC/Plb Service Tech (OT)		\$99.00	\$0.00
Air Compressor Tech (RT)		\$66.00	\$0.00
Air Compressor Tech (OT)		\$99.00	\$0.00
Laborer - Skilled (RT)		\$32.00	\$0.00
Laborer - Skilled (OT)		\$48.00	\$0.00
Laborer - Unskilled (RT)		\$23.00	\$0.00
Laborer - Unskilled (OT)		\$34.50	\$0.00

493

Equipment	Qty (hrs)	Rate/Hr	Extended
Welder		\$15.00	\$0.00
Power Threader	80	\$10.00	\$800.00
Mini/Midi Hammer		\$10.00	\$0.00
Variable Reach Forklift		\$27.00	\$0.00
Pickup Truck	493	\$15.00	\$7,395.00
Scissor Lift		\$19.00	\$0.00
Skid Steer		\$25.00	\$0.00
Boom Man Lift		\$29.00	\$0.00
Cat 420D Backhoe		\$34.00	\$0.00
Street Plate		\$7.00	\$0.00
185 CFM Compressor		\$15.00	\$0.00
ECM 350*		N/A	
Air Track Drill*		N/A	
Pipe Laser		\$21.00	\$0.00
Total Station EDM		N/A	
15 ton Boom Truck*		\$115.00	\$0.00
30-50 Ton RT Crane*		N/A	
80 Ton Crawler Crane*		N/A	
3" Submersible Pump		\$12.00	\$0.00
6" Hydraulic Pump		\$17.00	\$0.00

Materials & Subcontractors		
Materials		\$3,950.00



Markup on Material & Subcontractors	10.00%	\$395.00
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<b>TOTAL ESTIMATE</b>	<b>\$58,153.00</b>
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Contractor:

John Bouchard and Sons Company

City:

City of Murfreesboro Water Resources Dept.

By: David Proctor JV

By: \_\_\_\_\_

Name: David Proctor

Name: \_\_\_\_\_

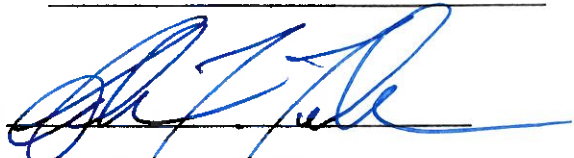
Title: Project Manager, Esquire

Title: \_\_\_\_\_

Date: 10/25/19

Date: \_\_\_\_\_

Approved as to Form:

  
Adam F. Tucker, City Attorney**CONTRACTOR NOTICE CONTACT INFORMATION****CITY NOTICE CONTACT INFORMATION**

John Bouchard and Sons Company

Murfreesboro Water Resources Dept.

Mailing address 1024 Harrison St.  
Nashville, TN 37203Mailing address 300 NW Broad St.  
Murfreesboro, TN 37130Phone number 615-256-0112Phone number 615-890-0862Fax number 615-256-2427Fax number 615-896-4259Company Contact David ProctorCompany Contact Darren GoreE-mail David.Proctor@jbouchard.comE-mail dgore@murfreesborotn.gov

## COUNCIL COMMUNICATION

Meeting Date: 11/07/19

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**Item Title:** Amending the Marketplace at Savannah Ridge PUD along  
Shelbyville Pike  
[Second Reading]

**Department:** Planning

**Presented by:** Matthew Blomeley, AICP, Acting Planning Director

**Requested Council Action:**

Ordinance	<input checked="" type="checkbox"/>
Resolution	<input type="checkbox"/>
Motion	<input type="checkbox"/>
Direction	<input type="checkbox"/>
Information	<input type="checkbox"/>

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**Summary**

Amend the Marketplace at Savannah Ridge PUD on approximately 24.15 acres located along Shelbyville Pike.

**Staff Recommendation**

Enact the ordinance amending the zoning as requested.

The Planning Commission recommended approval of the rezoning.

**Background Information**

Baker Storey McDonald presented a zoning application [2019-422] to amend the Marketplace at Savannah Ridge PUD (Planned Unit District) on approximately 24.15 acres along Shelbyville Pike. During its regular meeting on August 7, 2019, the Planning Commission conducted a public hearing on this matter and then voted to defer action. At its September 4, 2019 regular meeting, the Planning Commission considered the matter under "Old Business" and voted to recommend its approval.

On October 24, 2019 Council held a public hearing and approved this matter on First Reading.

**Attachments:**

1. Ordinance 19-OZ-36

**ORDINANCE 19-OZ-36** amending the Zoning Ordinance and the Zoning Map of the City of Murfreesboro, Tennessee, as heretofore amended and as now in force and effect, to amend the conditions applicable to approximately 24.15 acres in the Planned Unit Development (PUD) District (The Marketplace at Savannah Ridge PUD), located along Shelbyville Pike, as indicated on the attached map; Baker Storey McDonald, applicant [2019-422].

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MURFREESBORO, TENNESSEE, AS FOLLOWS:**

SECTION 1. That the same having been heretofore recommended to the City Council by the City Planning Commission, the Zoning Ordinance and the Zoning Map of the City of Murfreesboro, Tennessee, as herein referred to, adopted and made a part of this Ordinance as heretofore amended and as now in force and effect, be and the same are hereby amended so as to modify the conditions of the Planned Unit Development (PUD) District, as indicated on the attached map, for the purpose of decreasing the commercial square-footage to 137,455 square-feet, increasing the number of townhomes from 30 to 37, eliminating the 4 single-family residential detached dwelling units, and relocating the stormwater management areas.

SECTION 2. That, from and after the effective date hereof, the area depicted on the attached map shall be subject to all the terms and provisions of said Ordinance applicable to such districts, the plans and specifications filed by the applicant, and any additional conditions and stipulations set forth in the minutes of the Planning Commission and City Council relating to this zoning request. The City Planning Commission is hereby authorized and directed to make such changes in and additions to said Zoning Map as may be necessary to show thereon that said area of the City is zoned as indicated on the attached map. This zoning change shall not affect the applicability of any overlay zone to the area.

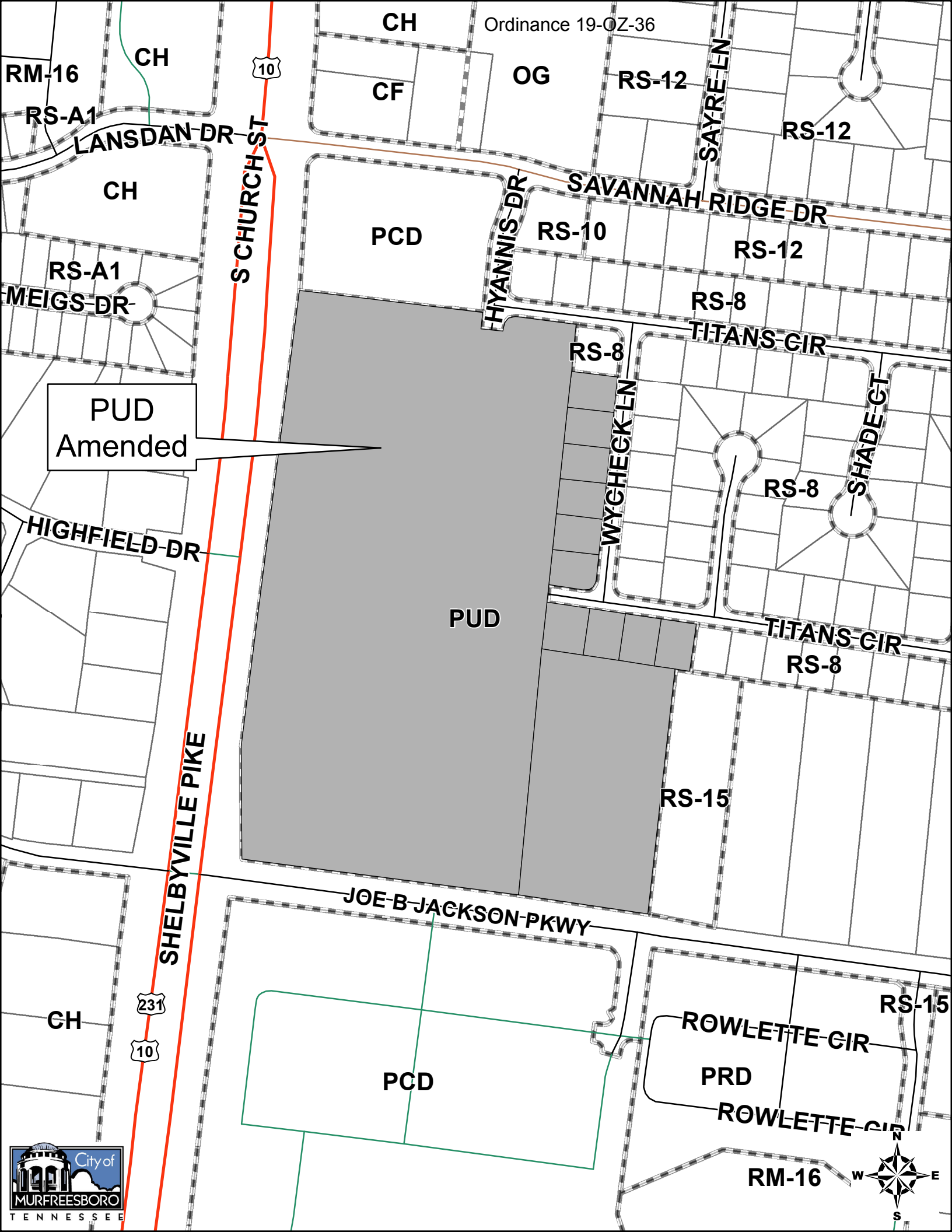
SECTION 3. That this Ordinance shall take effect fifteen (15) days after its passage upon second and final reading, the public welfare and the welfare of the City requiring it.

Passed:	_____
1 <sup>st</sup> reading	_____
2 <sup>nd</sup> reading	_____

Shane McFarland, Mayor

ATTEST:	APPROVED AS TO FORM:
_____	_____
Melissa B. Wright	Adam F. Tucker
City Recorder	City Attorney

SEAL



## COUNCIL COMMUNICATION

Meeting Date: 11/07/19

---

**Item Title:** Rezoning approximately 26.2 acres located along Cherry Lane  
[Second Reading]

**Department:** Planning

**Presented by:** Matthew Blomeley, AICP, Acting Planning Director

**Requested Council Action:**

Ordinance	<input checked="" type="checkbox"/>
Resolution	<input type="checkbox"/>
Motion	<input type="checkbox"/>
Direction	<input type="checkbox"/>
Information	<input type="checkbox"/>

---

**Summary**

Rezone approximately 26.2 acres located along Cherry Lane.

**Staff Recommendation**

Enact the ordinance establishing the requested zoning.

The Planning Commission recommended approval of the rezoning.

**Background Information**

The City presented a zoning application [2019-430] for approximately 26.2 acres to be rezoned from RS-15 (Single-Family Residential District 15) to P (Park District). During its regular meeting on September 4, 2019, the Planning Commission conducted a public hearing on this matter and then voted to recommend its approval.

On October 24, 2019 Council held a public hearing and approved this matter on First Reading.

**Attachments:**

1. Ordinance 19-OZ-37

**ORDINANCE 19-OZ-37** amending the Zoning Ordinance and the Zoning Map of the City of Murfreesboro, Tennessee, as heretofore amended and as now in force and effect, to rezone approximately 26.2 acres along Cherry Lane from Single-Family Residential Fifteen (RS-15) District to Park (P) District; City of Murfreesboro, applicant [2019-430].

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MURFREESBORO, TENNESSEE, AS FOLLOWS:**

SECTION 1. That the same having been heretofore recommended to the City Council by the City Planning Commission, the Zoning Ordinance and the Zoning Map of the City of Murfreesboro, Tennessee, as herein referred to, adopted and made a part of this Ordinance as heretofore amended and as now in force and effect, be and the same are hereby amended so as to rezone the territory indicated on the attached map.

SECTION 2. That, from and after the effective date hereof, the area depicted on the attached map shall be zoned and approved as Park (P) District, as indicated thereon, and shall be subject to all the terms and provisions of said Ordinance applicable to such districts. The City Planning Commission is hereby authorized and directed to make such changes in and additions to said Zoning Map as may be necessary to show thereon that said area of the City is zoned as indicated on the attached map. This zoning change shall not affect the applicability of any overlay zone to the area.

SECTION 3. That this Ordinance shall take effect fifteen (15) days after its passage upon second and final reading, the public welfare and the welfare of the City requiring it.

Passed:

1<sup>st</sup> reading \_\_\_\_\_

2<sup>nd</sup> reading \_\_\_\_\_

\_\_\_\_\_  
Shane McFarland, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Melissa B. Wright  
City Recorder

\_\_\_\_\_  
Adam F. Tucker  
City Attorney

SEAL

City Boundary

CIDER DR

ABIGAIL AVE

LEANNA RD

CHERRY LN

RS-15  
PRD

P

Area Rezoned  
From RS-15 to P

RS-15

PRD

CAROLINE FARMS DR

CU

PRD





# COUNCIL COMMUNICATION

Meeting Date: 11/07/19

---

**Item Title:** Zoning for property located along Asbury Lane  
[Second Reading]

**Department:** Planning

**Presented By:** Matthew Blomeley, AICP, Acting Planning Director

**Requested Council Action:**

Ordinance	<input checked="" type="checkbox"/>
Resolution	<input type="checkbox"/>
Motion	<input type="checkbox"/>
Direction	<input type="checkbox"/>
Information	<input type="checkbox"/>

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**Summary**

Zoning of approximately 10.2 acres located along Asbury Lane and Asbury Road.

**Staff Recommendation**

Enact the ordinance establishing the requested zoning.

The Planning Commission recommended approval of the zoning request.

**Background Information**

Landmark Homes of TN presented to the City a zoning application [2019-427] for approximately 10.2 acres located along Asbury Lane and Asbury Road to be zoned PRD (Planned Residential District) simultaneous with annexation. During its regular meeting on September 4, 2019, the Planning Commission conducted a public hearing on this matter and then voted to recommend its approval. The zoning request was made subject to several conditions. The pattern book has since been revised to comply with the conditions imposed by the Planning Commission.

On October 24, 2019 Council held a public hearing and approved this matter on First Reading.

**Attachments:**

1. Ordinance 19-OZ-38

**ORDINANCE 19-OZ-38** amending the Zoning Ordinance and the Zoning Map of the City of Murfreesboro, Tennessee, as heretofore amended and as now in force and effect to zone approximately 10.2 acres along Asbury Lane and Asbury Road as Planned Residential Development (PRD) District (Pretoria Falls PRD), simultaneous with annexation; Landmark Homes of TN, applicant [2018-427].

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MURFREESBORO, TENNESSEE, AS FOLLOWS:**

SECTION 1. That the same having been heretofore recommended to the City Council by the City Planning Commission, the Zoning Ordinance and the Zoning Map of the City of Murfreesboro, Tennessee, as herein referred to, adopted and made a part of this Ordinance as heretofore amended and as now in force and effect, be and the same are hereby amended so as to zone the territory indicated on the attached map.

SECTION 2. That, from and after the effective date hereof, the area depicted on the attached map be zoned and approved as Planned Residential Development (PRD) District, as indicated thereon, and shall be subject to all the terms and provisions of said Ordinance applicable to such districts, the plans and specifications filed by the applicant, and the conditions and stipulations referenced in the minutes of the Planning Commission and City Council relating to this zoning request. The City Planning Commission is hereby authorized and directed to make such changes in and additions to said Zoning Map as may be necessary to show thereon that said area of the City is zoned as indicated on the attached map. This zoning change shall not affect the applicability of any overlay zone to the area.

SECTION 3. That this Ordinance shall take effect fifteen (15) days after its passage upon second and final reading, the public welfare and the welfare of the City requiring it.

Passed: \_\_\_\_\_  
Shane McFarland, Mayor

1<sup>st</sup> reading \_\_\_\_\_

2<sup>nd</sup> reading \_\_\_\_\_

ATTEST: APPROVED AS TO FORM:

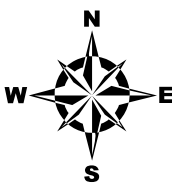
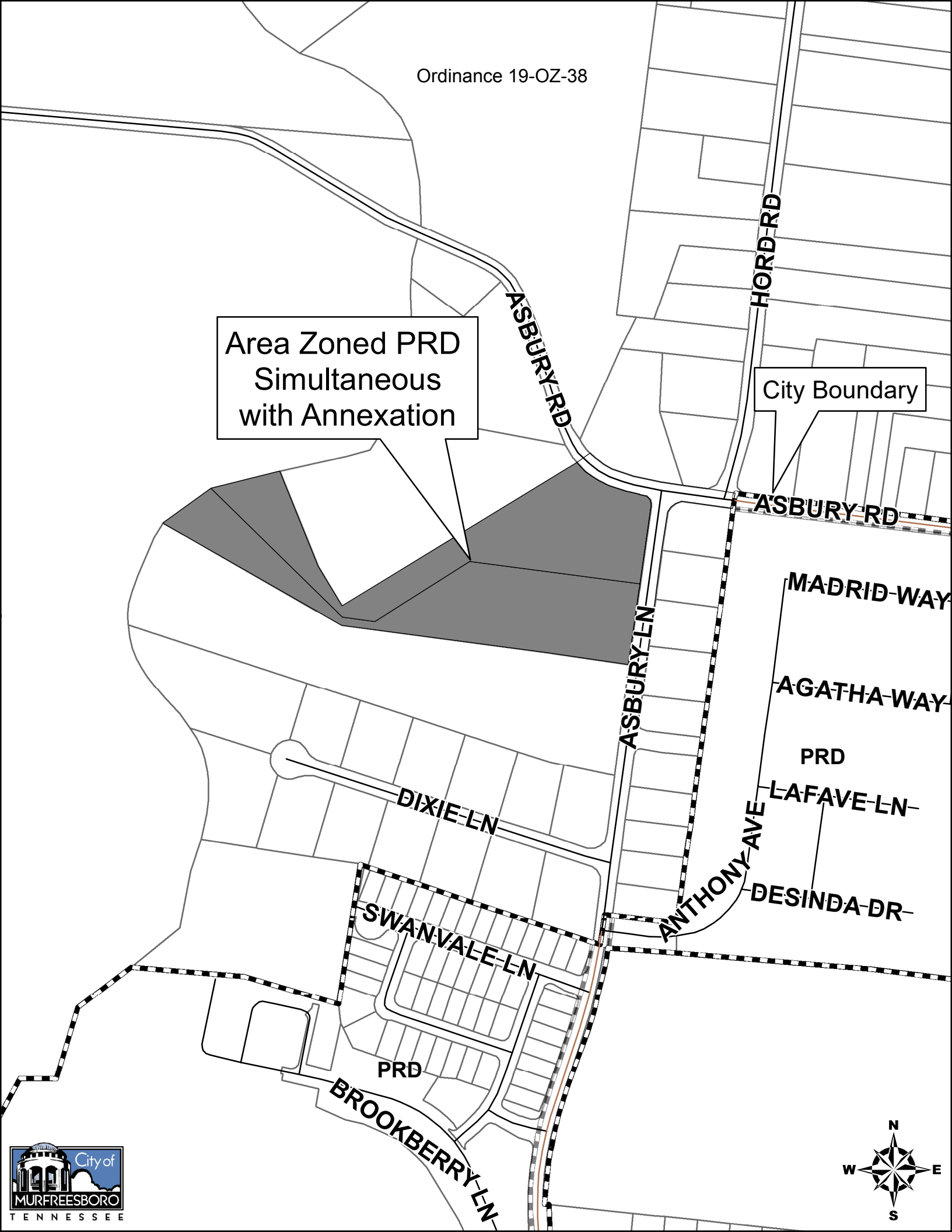
\_\_\_\_\_  
Melissa B. Wright  
City Recorder

\_\_\_\_\_  
Adam F. Tucker  
City Attorney

SEAL

Area Zoned PRD  
Simultaneous  
with Annexation

City Boundary



# COUNCIL COMMUNICATION

Meeting Date: 11/07/2019

---

**Item Title:** Murfreesboro Water Resources Board Member Compensation

**Department:** Water Resources

**Presented by:** Darren Gore

**Requested Council Action:**

Ordinance	<input checked="" type="checkbox"/>
Resolution	<input type="checkbox"/>
Motion	<input type="checkbox"/>
Direction	<input type="checkbox"/>
Information	<input type="checkbox"/>

---

**Summary**

Ordinance amending MWRD Board member compensation from \$100 per meeting to \$300 per meeting

**Staff Recommendation**

Approve ordinance 19-0-35.

**Background Information**

The compensation for members of the Water Resources Board has not changed since the year 2000. A compensation increase is necessary to be in line with the compensation for members of the Power Board, who have similar commitments of time, effort, and expertise.

**Council Priorities Served**

*Excellent Services with a Focus on Customer Service*

MWRD Board members are committed to the public health and welfare of MWRD customers and their expertise as an advisory Board safeguards the public and provides valuable insight to the City Council.

**Fiscal Impacts**

Increasing Board member pay to \$300 per meeting increases the Department's payroll budget by \$19,200 and has been accounted for in MWRD's FY20 budget.

**Attachments:**

1. Ordinance 19-0-35

**ORDINANCE 19-O-35** amending the Murfreesboro City Code, Chapter 2, Administration, Section 2-77, regarding Water Resources Board compensation.

**WHEREAS**, the compensation for members of the Water Resources Board has not changed since the year 2000; and,

**WHEREAS**, a compensation increase is necessary to be in line with the compensation for members of the Power Board, who have similar commitments of time, effort, and expertise.

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MURFREESBORO, TENNESSEE, AS FOLLOWS:**

SECTION 1. Section 2-77, Organization; quorum; meetings; compensation, of the Murfreesboro City Code is hereby amended at subsection (C) by deleting the words “\$100.00” and substituting in lieu thereof “\$300.00”.

SECTION 2. That this Ordinance shall take effect fifteen (15) days after its passage upon second and final reading, the public welfare and the welfare of the City requiring it.

Passed:	_____
1 <sup>st</sup> reading	_____
2 <sup>nd</sup> reading	_____

Shane McFarland, Mayor

ATTEST:	APPROVED AS TO FORM:
---------	----------------------

\_\_\_\_\_  
Melissa B. Wright  
City Recorder

\_\_\_\_\_  
Adam F. Tucker  
City Attorney

SEAL

# COUNCIL COMMUNICATION

Meeting Date: 11/07/19

---

**Item Title:** Planning Commission Recommendations  
**Department:** Planning  
**Presented by:** Matthew Blomeley, AICP, Acting Planning Director  
**Requested Council Action:**

Ordinance	<input type="checkbox"/>
Resolution	<input checked="" type="checkbox"/>
Motion	<input type="checkbox"/>
Direction	<input type="checkbox"/>
Information	<input type="checkbox"/>

---

## Summary

Rescheduling a matter previously heard by the Planning Commission for public hearing before Council.

## Staff Recommendation

Reschedule the public hearing for the item below.

## Background Information

During its regular meeting on October 2, 2019, the Planning Commission conducted a public hearing on the item listed below. After the public hearing, the Planning Commission discussed the matter and then voted to recommend its approval. On October 24, 2019, Council scheduled a public hearing for this matter on December 5, 2019. Subsequently, however, the applicant requested that this public hearing be rescheduled, because a key member of his design team will be unable to attend that evening due to a prior obligation.

- a. Zoning application [2019-426] for approximately 122.19 acres located along Cason Trail, Eastview Drive, and Racquet Club Drive to be rezoned from RS-10 and RS-15 to PUD (Hidden River Estates PUD), Blue Sky Construction applicant.

## Council Priorities Served

### *Engaging Our Community*

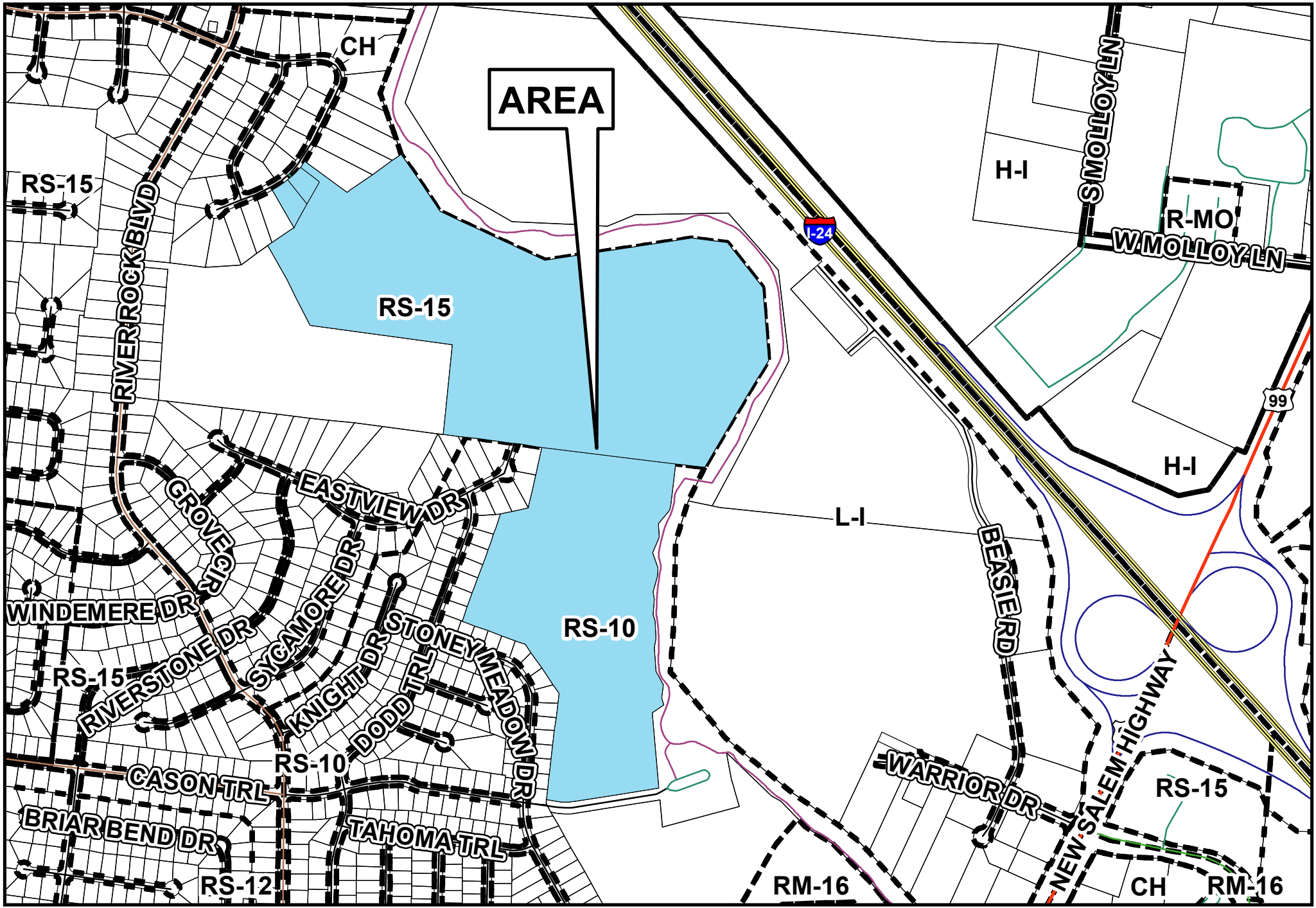
Public hearings are the official source of public input from stakeholders for zoning applications.

## Fiscal Impacts

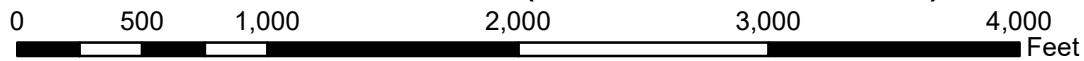
The only fiscal impact is the cost of advertising in the newspaper (exact cost unknown at this time).

## Attachment:

1. Map for zoning application for approximately 122.19 acres located along Cason Trail, Eastview Drive, and Racquet Club Drive



**Rezoning Request Along Cason Trail, Eastview Drive, and Racquet Club Drive  
RS-10 and RS-15 to PRD (Hidden River Estates PRD)**



Planning Department  
City of Murfreesboro  
111 West Vine Street  
Murfreesboro, Tennessee 37130  
[www.murfreesborotn.gov](http://www.murfreesborotn.gov)

# COUNCIL COMMUNICATION

Meeting Date: 11/07/2019

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**Item Title:** Affordable Housing Program – 511 East Sevier St

**Department:** Community Development

**Presented by:** Sam A. Huddleston, Acting Director

**Requested Council Action:**

Ordinance	<input type="checkbox"/>
Resolution	<input type="checkbox"/>
Motion	<input checked="" type="checkbox"/>
Direction	<input type="checkbox"/>
Information	<input type="checkbox"/>

---

**Summary**

Down payment assistance through the City's Affordable Housing Program.

**Staff Recommendation**

Approve the expenditure of \$10,000 for the activity using Community Development Block Grant (CDBG) funds.

**Background Information**

The purchaser of a new home constructed at 511 East Sevier Street has applied for and is eligible for down payment assistance through the City's Affordable Housing Program. Disbursement of funds is subject to final approval of the first mortgage loan and the property and applicant meeting all program income criteria at the time of closing. Sale price of the home is \$175,000. The first mortgage lender is Rutherford County Habitat for Humanity Inc.

**Council Priorities Served**

*Safe and Livable Neighborhoods*

This activity will assist an income-eligible household to purchase a home that will be safe, sanitary, and affordable.

**Fiscal Impacts**

The requested expenditure is within the Community Development budget for the Affordable Housing Program.



## **COUNCIL COMMUNICATION**

**Meeting Date: 11/07/2019**

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**Item Title:** Employee Handbook Policy 1014 – Reimbursement for Use of Personal Automobile on City Business

**Department:** Human Resources

**Presented by:** Pam Russell, Human Resources Director

**Requested Council Action:**

Ordinance	<input type="checkbox"/>
Resolution	<input type="checkbox"/>
Motion	<input checked="" type="checkbox"/>
Direction	<input type="checkbox"/>
Information	<input type="checkbox"/>

---

**Summary**

Revise Section 1014 of the Employee Handbook to eliminate unnecessary and burdensome insurance requirements.

**Staff Recommendation**

Approve revisions to Policy 1014.

**Background Information**

Employee Handbook Section 1014 was last updated on June 19, 2008 and is due for revision. This policy imposes certain insurance requirements on employees before they can be reimbursed for use of City vehicle. While employee are required to maintain insurance on personal vehicle, imposing specific requirements is unnecessary and be unduly burdensome. Moreover, the City provides adequate and applicable coverage for City use of personal vehicles.

**Attachment**

Updated Employee Handbook Policy 1014

## EMPLOYEE HANDBOOK

### Policy: 1014

#### Policy: Reimbursement for Use of Personal Automobile

Effective Date: 11/07/2019

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1. The City will reimburse employees for the use of personal vehicles for City business based on the current Internal Revenue Service optional standard mileage rates for calculation of tax-deductible costs that is in effect at the time of travel.
2. Mileage reimbursement should be requested on Form 1014 and submitted within 30 days of travel.
3. Reimbursement will be calculated for the employee's assigned office to the first destination of the day and then from each destination to the next work location.
4. No reimbursement will be provided for employees who are assigned or has access to a City vehicle for the trip. Executive Directors, Department Directors, and Assistant Department Directors are generally expected to travel within the City on various assignments or to various events without reimbursement as part of their duties. Extraordinary travel may be reimbursed upon approval of the City Manager.
5. Planned travel for more than 50 miles requires prior approval of the Department Director.
6. Employees are required to maintain personal liability and property damage on any personal vehicle used for City business at all times.

# COUNCIL COMMUNICATION

**Meeting Date: 11/07/2019**

---

**Item Title:** Repeal of Employee Handbook Section 1026 - Use of City-Owned Vehicles

**Department:** Human Resources

**Presented by:** Pam Russell, Director of Human Resources

**Requested Council Action:**

Ordinance	<input type="checkbox"/>
Resolution	<input type="checkbox"/>
Motion	<input checked="" type="checkbox"/>
Direction	<input type="checkbox"/>
Information	<input type="checkbox"/>

---

**Summary**

Repeal of Section 1026 for the Employee Handbook concerning the Use of City-Owned Vehicles as no longer necessary.

**Staff Recommendation**

Repeal Section 1026 of the Employee Handbook.

**Background Information**

In 1995, Section 1026 of the Employee Handbook was adopted to reimburse employees up to \$40.00 per year for the costs of a rider on their personal insurance for non-owned automobile liability insurance. The City current coverage and modern insurance practice makes such a rider ineffective. Therefore, the reimbursement is no longer required.

**Attachments**

Section No. 1026 - Use of City-Owned Vehicles

**CITY OF MURFREESBORO  
EMPLOYEE HANDBOOK**

**Section No: 1026**

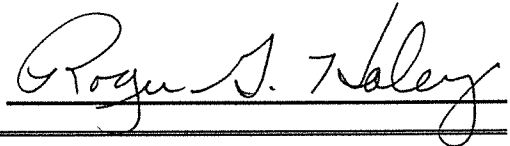
**Date: 2-9-95**

**Supersedes Section No:**

**Dated:**

**Subject: Use of City-Owned Vehicles**

**Approved: Roger G. Haley, City Manager**



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(a) The city will reimburse all employees who are authorized to drive a city owned vehicle home for properly documented expenses in purchasing a rider for "non-owned automobile liability insurance", not exceeding forty dollars (\$40.00) per year.

(b) The city will be liable, but only up to the statutory maximum provided by the Tennessee Governmental Tort Liability Act if a city owned vehicle is involved in an accident while the employee is on official business of the city, and while an employee is traveling to and from work, although the employee has made incidental stop(s) ALONG THE ROUTE. The city will not make claim against a city employee for the damage resulting at such times, except for willful and intentional acts to damage or harm property or persons, or substantial deviation from the employee's route to or from work. A substantial deviation is more than two (2) miles off the most direct route (one-way) between home and work.

(c) Nothing in this policy authorizes an employee to drive a city owned vehicle while off-duty.

(d) When a city employee is authorized to drive a city owned vehicle home, the department head must give notice of such authorization to the City Manager and City Treasurer. The City Manager must give prior written approval before an employee is authorized to drive a city owned vehicle home, except in cases of an emergency. In the case of an emergency, the department head must give prompt timely notice to the City Manager, and City Treasurer.

# COUNCIL COMMUNICATION

**Meeting Date: 11/07/2019**

---

**Item Title:** Update of Employee Handbook Section 4001 – Safety and Health Protection on the Job

**Department:** Human Resources

**Presented by:** Pam Russell, Human Resources Director

**Requested Council Action:**

Ordinance	<input type="checkbox"/>
Resolution	<input type="checkbox"/>
Motion	<input checked="" type="checkbox"/>
Direction	<input type="checkbox"/>
Information	<input type="checkbox"/>

---

**Summary**

Update to Employee Handbook Section 4001 - Safety and Health Protection on the Job and eliminate other safety sections that have been incorporated into a comprehensive Occupational Safety and Health Program.

**Staff Recommendation**

Approve updates to Employee Handbook Section 4001 and repeal Sections 4002-4013.

**Background Information**

The City has developed an Occupational Safety and Health Program that encompasses all safety procedures and processes. Information previously listed in the Employee Handbook has been provided in the Program materials. Section 4001 as revised incorporates the Program. Therefore, for purposes of consistency and ease of reference, it is recommended that Employee Handbook Section 4001 be updated and the following Sections be repealed:

- Section 4002 – Safety Rules
- Section 4003 – Safety Concerns
- Section 4004 – Safety Violations
- Section 4005 – Accidents – Property Damages and Personal Injury
- Section 4006 - Accident Investigations/Accident Reports
- Section 4009 – Hazardous Chemical Right-to-Know
- Section 4011 – First Aid
- Section 4012 – Blood and Body Fluid Spills
- Section 4013 – Vomit, Urine, or Feces Cleanup

Sections not sequentially listed above were previously been repealed.

**Attachment**

Employee Handbook Section 4001 (as revised)

## **EMPLOYEE HANDBOOK**

**Policy No: 4001**

**Policy: Safety and Health Protection on the Job**

**Effective Date: 11/07/2019**

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### **1. Policy Objective**

- 1.1 Each employee is responsible for conducting all tasks in a safe and efficient manner, complying with all local, state, and federal safety and health regulations and the City's Occupational Safety and Health Program.
- 1.2 Each employee is responsible for knowing the emergency plan for their working areas.

### **2. Implementation**

- 2.1 The City will publish an Occupational Safety and Health Program that will be updated regularly, as needed. All employees must adhere to the procedures specified in the Program and each Department must make the Program readily available to all employees. Failure to adhere to the Program may result in the assessment of disciplinary measures.
- 2.2 In addition to the Occupational Safety and Health Program, each City facility must post an emergency plan detailing the procedures for responding to various unanticipated emergencies such fire, weather, and other threats.
- 2.3 Each employee must complete an Accident and Incident Report for each safety and health incident covered by the Occupational Safety and Health Program that occurs or that the employee witnesses. The failure to report an incident can result in employee disciplinary action.

# COUNCIL COMMUNICATION

Meeting Date: 11/07/2019

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**Item Title:** Veterans Ride Free On Rover

**Department:** Transportation - Rover

**Presented by:** Russ Brashear

**Requested Council Action:**

Ordinance	<input type="checkbox"/>
Resolution	<input type="checkbox"/>
Motion	<input checked="" type="checkbox"/>
Direction	<input type="checkbox"/>
Information	<input type="checkbox"/>

---

## Summary

Test pilot program to allow veterans to ride Rover for free.

## Staff Recommendation

Approve a temporary suspension of Rover fare during the months of November and December 2019 to test the use of Rover by veterans and establish effect on fare collection.

## Background Information

Both the Regional Transit Authority of Middle Tennessee (RTA) and Franklin Transit provide free transit for Veterans. RTA Board approved the program for the entire year of 2019 while Franklin is providing the free service indefinitely. While neither transit system has high veteran ridership, because the City is home to the Veterans Hospital, Rover does provide transit service to a larger number of veteran patrons; estimated at 10 times that of RTA. To assist in resolving an unanticipated issue during the transition to Rover's new fare collection system, fees for veterans were suspended during last September, which was much appreciated by our veterans. Approximately 1,000 free rides were provided during this month.

## Council Priorities Served

### *Engaging Our Community*

Providing a free service to those who have served our Country will be appreciated by the community.

## Fiscal Impacts

The cost of providing this free ridership to veterans is estimated to decrease revenues by \$12,000 annually.

## Attachments:

1. Copy of RTA Executive Action
2. Copy of Rover September 2019 Notice of Veterans Ride Free

**REGIONAL TRANSPORTATION AUTHORITY**  
OF MIDDLE TENNESSEE  
**EXECUTIVE COMMITTEE ACTION ITEM**

Item Number: EXC-A-19-002

Meeting Date: 01/16/19

Item Title: VETERANS RIDE FREE ON RTA

---

**BACKGROUND**

To honor members of our community who served in the military, the Regional Transportation Authority of Middle Tennessee (RTA) approved a temporary Free Fare Program for United States veterans to ride all RTA commuter bus and rail services for the holidays in November and December 2018.

RTA staff recorded 243 rides made by veterans in November and 159 in December. The majority of rides were taken on the Clarksville Express and the Music City Star followed by the Nashville/Murfreesboro Relax & Ride and Franklin Express. During this program, there was no significant change in overall revenue or ridership.

Data does not indicate if these were new riders or riders who previously paid full or partial fare for the service. RTA staff is conducting surveys to help further evaluate actual positive or negative impacts of the program on revenue and ridership. However, if every rider was previously a full fare paying rider, the maximum loss to RTA would be approximately \$1,000 a month in revenue annualized to around \$12,000 per year.

**RECOMMENDATION**

Based on the small potential cost to RTA compared to the sacrifice made by our veterans in service to our country, the Finance Committee recommends the Executive Committee approve the continuation of this program throughout Fiscal Year 2019 and direct RTA Staff to include the free fare for Veterans as a permanent part of the RTA fare structure review for FY2020.

RTA will continue to assess ridership and revenue patterns supplemented by rider surveys to monitor the impact and success of the program.

---

Approved:



Secretary

---

January 16, 2019

Date



THE MONTH OF SEPTEMBER  
any VETERAN with a valid ID  
confirming their status may  
RIDE FREE



CITY OF MURFREESBORO

ROVER TRANSPORTATION DEPARTMENT



# COUNCIL COMMUNICATION

Meeting Date: 11/07/2019

---

**Item Title:** Water/Wastewater Mech/Elect Services Task Order No. 19-11

**Department:** Water Resources

**Presented by:** Darren Gore

**Requested Council Action:**

Ordinance	<input type="checkbox"/>
Resolution	<input type="checkbox"/>
Motion	<input checked="" type="checkbox"/>
Direction	<input type="checkbox"/>
Information	<input type="checkbox"/>

---

**Summary**

Replace existing variable frequency drive (VFD) for No. 1 High Service Pump.

**Staff Recommendation**

Approve Task Order No. 19-11 from John Bouchard and Sons in accordance with the Water/Wastewater Mechanical/Electrical Services Contract.

**Background Information**

John Bouchard Mechanical/Electrical Services Contract allows for task orders defining a specific scope of work to be issued by MWRD. Task Order No. 19-11 is to remove an existing VFD and replace with new VFD. The existing VFD repair cost is estimated at \$240,000, and the drive is obsolete and was scheduled to be replaced with the other two high service pump VFDs in FY21. There are currently three high service pumps that pump water from the treatment plant to five storage tanks. Two pumps are used daily for this operation. With this VFD out of service, there are only two available for pumping demand. The No. 1 VFD needs replacing immediately to prevent a possible reduction in production. The other two VFDs will maintain a replacement schedule for FY21.

**Council Priorities Served**

*Excellent Services with a Focus on Customer Service*

Provides proper equipment for personnel to perform their duties and maintain safe and clean drinking water properly flowing to each customer.

**Fiscal Impacts**

The cost for the project is estimated at a not-to-exceed cost of \$287,497.40 and if approved funding to come from working capital reserves.

**Attachments:**

1. JBS Task Order 19-11 – No. 1 VFD Replacement



...

**TASK ORDER NO. – 19-11**

**November 4, 2019**

**BETWEEN**

**JOHN BOUCHARD & SONS COMPANY AND CITY OF MURFREESBORO  
acting by and through the Murfreesboro Water and Sewer Department**

**UNDER**

**Water/Wastewater System Mechanical/Electrical Services Contract**

**DATED**

**June 6, 2019 thru June 6, 2020**

**FOR**

**HS Pump VFD #1 Replacement**

***Task Order – 19-11***

***High Service Pump #1 VFD Replacement***

***Murfreesboro Water Plant***

**BACKGROUND**

JBS has been asked to replace the existing High Service Pump #1 VFD since the existing drive has failed and the repair estimate is more costly than the replacement.

**SCOPE OF WORK**

Labor and materials by JBS to demolish the existing VFD #1, and furnish and install a new Allen Bradley 1,000 hp VFD with harmonic filters and startup. Includes a boom truck and an allowance for materials. Note that JBS has conservatively estimated the labor and materials since we are not certain whether the new drive will accommodate the existing wiring (like the situation encountered with the recent drive replacement at the auxiliary lake intake).

**FISCAL IMPACT**

<b>Murfreesboro Service Contract Rate Sheet - 2019</b>			
<b>Task Order 19-11 Replace (1) High Service Pump Drive Budget Estimate</b>			
<b>Description</b>	<b>Qty (hrs)</b>	<b>Rate</b>	<b>Extended</b>
Project Mgr (RT)	40	\$75.00	\$3,000.00
Project Mgr (OT)		\$110.00	\$0.00
Superintendent (RT)	12	\$67.00	\$804.00
Superintendent (OT)		\$100.50	\$0.00
Pipefitter/Welder (RT)		\$52.00	\$0.00
Pipefitter/Welder (OT)		\$78.00	\$0.00
Sprinkler Fitter (RT)		\$44.00	\$0.00
Sprinkler Fitter (OT)		\$66.00	\$0.00
Electrician (RT)	120	\$52.00	\$6,240.00
Electrician (OT)		\$78.00	\$0.00
Apprentice/Helper (RT)	120	\$37.00	\$4,440.00
Apprentice/Helper (OT)		\$55.50	\$0.00

<b>Equipment</b>	<b>Qty (hrs)</b>	<b>Rate/Hr</b>	<b>Extended</b>
Welder		\$15.00	\$0.00
Power Threader	80	\$10.00	\$800.00
Mini/Midi Hammer		\$10.00	\$0.00
Variable Reach Forklift		\$27.00	\$0.00
Pickup Truck	120	\$15.00	\$1,800.00
Scissor Lift		\$19.00	\$0.00
Skid Steer		\$25.00	\$0.00
15 ton Boom Truck*	8	\$115.00	\$920.00
30-50 Ton RT Crane*		N/A	

<b>Materials &amp; Subcontractors</b>		
Misc. Materials		\$35,000.00
1000 HP Power Drive per quote 11/04/19		\$165,000.00
1000 HP Harmonic Filter \$41,262.00 Each		\$41,262.00
Role out cart for 1000 HP Drive		\$1,232.00
Startup Services per day for drives \$2,500		\$2,500.00
Markup on Material & Subcontractors	10.00%	\$24,499.40

**TOTAL ESTIMATE****\$287,497.40**

Contractor:

John Bouchard and Sons Company

City:

City of Murfreesboro

By: David Proctor IV

By: \_\_\_\_\_

Name: David ProctorName: Shane McFarlandTitle: Project ManagerTitle: MayorDate: 11/04/19

Date: \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
Adam F. Tucker, City Attorney**CONTRACTOR NOTICE CONTACT INFORMATION****CITY NOTICE CONTACT INFORMATION**

John Bouchard and Sons Company

Murfreesboro Water and Sewer Dept.

Mailing address 1024 Harrison St.  
Nashville, TN 37203Mailing address 300 NW Broad St.  
Murfreesboro, TN 37130Phone number 615-256-0112Phone number 615-890-0862Fax number 615-256-2427Fax number 615-896-4259Company Contact David ProctorCompany Contact Darren GoreE-mail David.Proctor@jbouchard.comE-mail dgore@murfreesborotn.gov

# COUNCIL COMMUNICATION

**Meeting Date: 11/07/2019**

---

**Item Title:** Water Resources Board

**Department:** Administration

**Presented by:** Mayor McFarland

**Requested Council Action:**

Ordinance	<input type="checkbox"/>
Resolution	<input type="checkbox"/>
Motion	<input checked="" type="checkbox"/>
Direction	<input type="checkbox"/>
Information	<input type="checkbox"/>

---

**Summary**

Reappointment of one member to the Water Resources Board.

**Staff Recommendation**

The purpose of the Water Resources Board is to supervise and control the water and sewer systems of the City in cooperation with the City Manager. The City Manager appoints the members with the consent of the City Council.

**Background Information**

The Water Resources Board consist of 8 members two being City Council members with staggered terms. One member is due for reappointment.

**Council Priorities Served**

As part of engaging the community, residents are encouraged to volunteer for service on a board or commission.

**Fiscal Impacts**

There is no fiscal impact related to the reappointment.

**Attachments:**

1. Memo from Mayor McFarland
2. Memo from Darren Gore, Assistant City Manager





*. . . creating a better quality of life.*

November 7, 2019

Members of City Council

**RE: Recommended Reappointment – Water Resources Board**

---

**Board Reappointments**

As an item for the Council Agenda, I am recommending the reappointments of the following to the Water Resources Board.

**Reappointment**

Mr. Alphonse Carter, Jr. term expires: June 30, 2023

Sincerely,

Shane McFarland  
Mayor





*... creating a better quality of life*

## *MEMORANDUM*

DATE: November 1, 2019

TO: Mayor Shane McFarland

FROM: Darren Gore

SUBJECT: Recommendation for Reappointment to the Water Resources Board

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Dr. Alphonse Carter, Jr's term on the Water Resources Board expired at the end of June 2019. Dr. Carter has been a member of the Water Resources Board since November 1999. Based on his regular attendance, length of term served and willingness to work with staff it is recommended that he be considered for reappointment.

Your approval of this recommendation is appreciated.

# COUNCIL COMMUNICATION

Meeting Date: 11/07/2019

---

**Item Title:** Disciplinary Review Board Appointment

**Department:** Administration

**Presented by:** Mayor McFarland

**Requested Council Action:**

Ordinance	<input type="checkbox"/>
Resolution	<input type="checkbox"/>
Motion	<input checked="" type="checkbox"/>
Direction	<input type="checkbox"/>
Information	<input type="checkbox"/>

---

**Summary**

Appointment of one member to the Disciplinary Review Board, replacing the vacancy left by Doug Patrick.

**Background Information**

The purpose of the Disciplinary Review Board is to provide a due process hearing for certain employment decisions made by the City Manager.

As established by City Code § 36(a), the Disciplinary Review Board consists of seven members who serve six-year, staggered terms. At least one member must be a manufacturing representative; a business owner; a manager of 20 employees or more; a non-city employee who is not in management; and one shall be a doctor, lawyer, dentist, engineer, accountant or architect. All members must be registered voters of the City for a period of not less than two years preceding such members.

**Council Priorities Served**

*Engaging Our Community*

Residents volunteer for service on the City several boards and commissions and are instrumental in the operations of several City departments.

**Fiscal Impacts**

There is no fiscal impact related to the reappointment.

**Attachments:**

1. Memo from Mayor McFarland



*. . . creating a better quality of life.*

November 7, 2019

Members of City Council

**RE: Recommended Appointment – Disciplinary Review Board**

---

**Board Appointment**

As an item for the Council Agenda, I am recommending the appointment of the following to the Disciplinary Review Board.

**Appointment**

Mr. Eric L. Meriwether (Category of Business Owner) (replacing the vacancy left by Doug Patrick) term expires: September 30, 2025

Sincerely,

Shane McFarland  
Mayor